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including the right to development**

**Report of the Working Group on the use of mercenaries as a
means of violating human rights and impeding the exercise of
the right of peoples to self-determination****Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The report covers the activities of the Working Group from September 2017 to July 2018 and focuses on the recruitment of children by non-State armed groups, including mercenaries and private military and security companies. In addressing this issue, the Working Group refers to the international legal framework and non-binding initiatives on the use of children in armed conflicts and presents some of its findings from past country visits. It also addresses issues, including recruitment practices and motivational factors, that result in children being associated with non-State armed groups. The report highlights the human rights impact of this phenomenon and provides recommendations addressed to States, private military and security companies, non-State armed groups, the International Code of Conduct for Private Security Service Providers' Association and the Montreux Document Forum.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

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I. Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 2005/2, in which the Commission established the mandate of the Working Group, and Human Rights Council resolution 33/4, in which the Council further renewed the mandate. The report covers the activities of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination since its previous report to the Human Rights Council (A/HRC/36/47). These include regular sessions, country visits and other activities of the members during the reporting period.

2. In addition, the present report contains the outcome of a study of the Working Group on the phenomenon of the recruitment and use of children by non-State armed groups, including mercenaries and private military and security companies.

3. The Working Group is mandated by the Human Rights Council to monitor and study the effects of mercenaries and mercenary-related activities as well as the impact of the activities of private military and security companies on the enjoyment of human rights. In past years, the Working Group has conducted various types of research and studies to assess the linkages between mercenarism and foreign fighters, devoting attention to the human rights impact of these activities; recruitment practices; and motivational factors, particularly economic or financial gains, that draw foreign fighters into engaging in armed conflict. The findings of the Working Group on these topics were elaborated in its past reports to the Human Rights Council and the General Assembly.¹ The Working Group has found similarities and linkages between mercenarism and the foreign fighter phenomenon that justify classifying the latter as a mercenary-like activity.

4. Through its various official country visits, the Working Group has had the opportunity to assess closely the situations in which mercenaries, foreign fighters and private military and security companies operate. Among the issues identified during these visits, the Working Group is particularly concerned by the widespread phenomenon of recruitment and use of children by non-State armed groups, including foreign fighters, either to actively participate in hostilities or to provide direct support. In its visit to Côte d'Ivoire, the Working Group found that children who were exposed to a culture of violence and subsequently engaged in criminal activities as a result were also susceptible to being recruited as combatants. Some of those children later became mercenaries or joined criminal gangs (see A/HRC/30/34/Add.1, para. 54). In the Central African Republic, the Working Group found that some children who had been connected with armed groups later joined armed rebellions in neighbouring countries as foreign fighters (see A/HRC/36/47/Add.1, para. 57).

5. As part of the above-mentioned study, on 30 November 2017, the Working Group held a private expert consultation in Geneva to collect and discuss information. In the present report, the Working Group presents the outcome of the study. The report sets out the relevant international legal framework and complementary non-binding initiatives. It explores the associated motivational factors that result in children being associated with non-State armed groups. The report provides an analysis of the human rights impact of this phenomenon, including from a gender perspective. It also discusses issues related to the alleged recruitment of former child soldiers by private military and security companies. Following an examination of responses to the phenomenon, the report concludes with recommendations for States and other relevant stakeholders.

¹ See A/70/330, A/71/318, A/HRC/33/43/Add.1-3 and A/HRC/36/47/Add.1.

II. Activities of the Working Group

6. During the period under review, the Working Group held three regular sessions: two in Geneva and one in New York. It held meetings with representatives of States, civil society partners and external experts.

A. Thirty-second, thirty-third and thirty-fourth sessions of the Working Group and new members

7. The thirty-second session of the Working Group took place in Geneva from 27 November to 1 December 2017. On 30 November 2017, the Working Group held an expert consultation on the recruitment of children by non-State armed groups, including mercenaries, and private military and security companies. The Working Group is grateful to all the participants who contributed to the discussion.

8. The thirty-third session took place in Geneva from 3 to 6 April 2018. During the session, members of the Working Group held bilateral meetings with representatives of Member States and other relevant interlocutors.

9. On 30 April 2018, the term of office of Working Group members Patricia Arias, Elzbieta Karska and Anton Katz officially ended. These members had served the Working Group for just over six years and had made valuable contributions to various initiatives and activities under the Working Group's mandate.

10. On 1 May 2018, the Human Rights Council, at its thirty-seventh session, appointed three new members of the Working Group: Lilian Bobea (Dominican Republic), Chris Kwaja (Nigeria) and Jelena Aparac (Croatia). The Chairperson-Rapporteur of the Working Group, Mr. Rona, extended a warm welcome to the new members and a teleconference was held between the outgoing and incoming members to exchange information and share ideas about the Working Group's mandate.

B. Country visits

11. Country visits form a central aspect of the work of the Working Group. Visits provide an opportunity for the Working Group to consult in situ with Government officials and other actors in the country on issues related to its mandate. Through country visits, the Working Group can also identify and facilitate the exchange of good practices. Despite various visit requests and efforts made to follow up on the pending requests, the Working Group has been facing challenges in receiving timely and favourable responses from States to its requests for country visits. In this regard, the Working Group would like to recall Human Rights Council resolution 16/21, in which the Council urged States to cooperate and assist special procedures by responding in a timely manner to requests for information and visits. The Working Group therefore calls upon all States, particularly those that have extended standing invitations to special procedure mandate holders, to give serious consideration to responding favourably to its requests for country visits.

12. During the reporting period, the Working Group conducted official visits to Ghana, from 8 to 15 December 2017 (see A/HRC/39/49/Add.1), to Chad, from 16 to 23 April 2018 (see A/HRC/39/49/Add.2), and to Austria, from 21 to 29 June 2018.

C. Other activities of the Working Group members

13. On 16 November 2017, the Chairperson-Rapporteur, Mr. Rona, participated as a speaker in a panel event entitled "Private military companies: armies of the future?". The event was organized by the King's Think Tank at King's College London. Mr. Rona delivered a presentation on the findings of the Working Group in relation to private military and security companies, including the regulatory gaps in national legislation relating to these companies; the United Nations stance on private military and security companies; and the way forward for the Working Group. During the event Mr. Rona also provided his

views on whether private military and security companies could be used alongside national armies and whether they would be appropriate for peacekeeping missions.

14. On 27 and 28 February 2018, Ms. Arias participated in the Montreux Document Forum Regional Meeting in Costa Rica. On behalf of the Working Group, she delivered a presentation on the private military and security industry in Latin America and the Caribbean, entitled "Introduction to challenges and opportunities for regulation".

15. On 18 April 2018, Mr. Rona participated as a speaker in a panel discussion at the seventeenth session of the Permanent Forum on Indigenous Issues in New York. Mr. Rona delivered a presentation on private military and security companies in extractive industries and their impact on human rights and indigenous peoples' rights. In his remarks, he highlighted human rights concerns relating to the use of private military and security companies in extractive industries and its impact on indigenous peoples' land rights. He also addressed the gaps in the existing regulatory framework and called for robust regulation to ensure accountability.

16. From 16 to 24 May 2018, Mr. Rona conducted an academic visit to Brazil. Mr. Rona gave lectures at universities in Rio de Janeiro, Dourados and Belem on the Human Rights Council's special procedures system, in particular on the Working Group's mandate. He also met with many individuals familiar with the operation of private militias in the urban favelas and private security companies working for agribusiness interests in territories claimed by indigenous peoples.

17. On 7 June 2018, Mr. Rona participated as a speaker in a panel discussion on current developments in other processes relating to the regulation of private military and security companies, during the fourth plenary meeting of the Montreux Document Forum in Geneva.

III. Recruitment of children by non-State armed groups, including mercenaries, and private military and security companies

A. International legal framework and complementary non-binding initiatives

18. The recruitment and use of children in armed conflicts is one of the six grave violations identified and condemned by the Security Council (see Council resolution 1261 (1999)). International humanitarian law, international human rights law and international criminal law all prohibit both States and non-State armed groups from recruiting or using children in hostilities.

19. International humanitarian law applicable in armed conflicts recognizes children's rights and protects their dignity. More specifically, article 77 (2) of the Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts (Additional Protocol I) provides that the parties to the conflict are to take all feasible measures in order that children who have not attained the age of 15 years do not take a direct part in hostilities and that, in particular, they are to refrain from recruiting them into their armed forces. Article 4 (3) (c) of the Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Additional Protocol II), which is also applicable in non-international armed conflict, provides that children who have not attained the age of 15 years are neither to be recruited in the armed forces or groups, nor allowed to take part in hostilities. This provision awards a broad scope of protection to children under the age of 15 years, as it does not draw any distinction between "direct" and "indirect" participation in hostilities. In addition, children fall within the general protection of civilians under this set of laws. Furthermore, customary international humanitarian law recognizes the prohibition

of recruitment of child soldiers in both international and non-international armed conflicts.² This is applicable to all actors in armed conflict, including private military and security companies.

20. International human rights law, applicable both in peacetime and in armed conflicts, provides complementary protection. Article 38 (3) of the Convention on the Rights of the Child also provides that States parties are to refrain from recruiting any person who has not attained the age of 15 years into their armed forces. Further, article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict raises the age of possible recruitment of persons into armed forces and their participation in hostilities. It prohibits armed groups that are distinct from the armed forces of a State from recruiting or using in hostilities persons under the age of 18 years. The same article obliges States to take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices. The Special Court for Sierra Leone stated in its decision *Prosecutor v. Sam Hinga Norman* that, for the purposes of implementation of the Convention on the Rights of the Child and its Optional Protocol, all “feasible measures” and “appropriate legislation” were at the disposal of States to prevent child recruitment; it would seem that these also include criminal sanctions as measures of enforcement.³

21. Under international criminal law, the Rome Statute of the International Criminal Court provides that conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities constitutes a war crime in both international and non-international armed conflict. This was also confirmed by its case law (see *Prosecutor v. Thomas Lubanga Dyilo*, case No. ICC-01/04-01/06). The adopted terminology of “participate actively” comprises not only combat activities but also activities such as sabotage or spying.

22. It is recognized under international law that the prohibition of child recruitment also entails individual criminal responsibility. In this respect, the Special Court for Sierra Leone stated that, in creating the International Criminal Tribunal for Rwanda (ICTR) Statute, the Security Council explicitly recognized for the first time that serious violations of fundamental guarantees led to individual criminal liability and that that recognition had been confirmed later on by decisions and judgments of the ICTR; it added that the prohibition of child recruitment constituted a fundamental guarantee and that, although it was not enumerated in the ICTR or International Criminal Tribunal for the Former Yugoslavia (ICTY) statutes, it shared the same character and was of the same gravity as the violations that were explicitly listed in those statutes.⁴ It is worth highlighting that, in terms of culpability, the legal framework does not make distinctions according to the path by which the child entered the armed group. In other words, when it comes to the culpability of the adult recruiter, “voluntary” enlistment and forcible abduction into an armed group are treated identically. The “consent” of the minor is no defence for the adult who is accused.⁵

23. In addition, at the international level, efforts have been made to develop non-binding principles aiming to engage the private sector in respecting and protecting children’s rights. For example, the multi-stakeholder initiative Children’s Rights and Business Principles requires companies not to recruit or use children in security arrangements either directly or through private or public security service providers (principle 8).

² See International Committee of the Red Cross, “Customary IHL database”, available at ihl-databases.icrc.org/customary-ihl/eng/docs/home (accessed 9 July 2018), rules 136 and 137.

³ Decision on preliminary motion based on lack of jurisdiction (child recruitment) (case No. SCSL-2004-14-Ar72(E)) of 31 May 2004.

⁴ Ibid.

⁵ Mark Drumbl and Gabor Rona, “Navigating challenges in child protection and the reintegration of children associated with armed groups”, in *Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict*, Siobhan O’Neil and Kato Van Broeckhoven, eds. (New York, United Nations University, 2018), pp. 210–232. Available at reliefweb.int/sites/reliefweb.int/files/resources/Cradled_by_Conflict.pdf.

24. Private military and security companies operating in areas affected by armed conflict may risk being involved in unlawfully recruiting children. In this regard, the Committee on the Rights of the Child stresses in its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights that both home and host States should introduce and implement national legislation that includes a specific prohibition on such companies recruiting children or using them in hostilities; requirements for effective measures to protect children from violence and exploitation; and mechanisms for holding personnel accountable for abuses of children's rights.

25. In the absence of an international legally binding instrument regulating the activities of private military and security companies, the Working Group reiterates its call for such an instrument to ensure consistent regulation worldwide and adequate protection of the human rights of all affected by the activities of such companies. The Working Group is of the view that regulation of non-State actors, such as private security providers, requires a multidimensional approach that also includes industry-led efforts to improve compliance with human rights standards. In this regard, the Working Group is pleased at the development of self-regulation and voluntary initiatives, such as the Montreux Document Forum and the International Code of Conduct for Private Security Service Providers, which have clearly led to improved standards across the industry. For instance, concerning the selection and vetting of personnel, the International Code of Conduct for Private Security Service Providers clearly requires the commitment from its signatory companies not to hire individuals under the age of 18 years to carry out security services.

B. Mercenaries and foreign fighters

26. Based on its study on the phenomenon of foreign fighters, the Working Group submitted two reports to the General Assembly examining the linkages between mercenaries and foreign fighters and their impact on human rights and the right of peoples to self-determination. While there is no legal definition of foreign fighters, the Working Group analysed the similarities and differences between these two actors in terms of recruitment, motivation and their impact on human rights. In its report, the Working Group concluded that both mercenaries and foreign fighters were external actors that intervened in an armed conflict (see A/70/330, para. 86). The Working Group further asserted that foreign fighters represented a possible contemporary form of mercenarism or mercenary-related activities (see A/70/330, para. 88 and A/71/318, para. 77).

27. As part of its study on the phenomenon of foreign fighters, members of the Working Group conducted country visits to Tunisia (see A/HRC/33/43/Add.1), Belgium (see A/HRC/33/43/Add.2), Ukraine (see A/HRC/33/43/Add.3) and the European Union (see A/HRC/33/43/Add.4). During these visits, the Working Group observed that the root causes of individuals, including children, being vulnerable to radicalization were poor social integration, perceived procedural injustice and perceived discrimination in society (see A/HRC/33/43/Add.2, para. 40).

C. Recruitment practices

28. Around the world, hundreds of thousands of children are associated with non-State armed groups, including foreign fighters. These boys and girls are forced to serve as combatants, servants, messengers or sex slaves or in other roles. They are associated with non-State armed groups in many different ways. Some boys and girls are abducted, trafficked or forced into conscription; some are born into non-State armed groups; some seem to join these groups voluntarily for various reasons.

29. During its visit to the Central African Republic in 2016, the Working Group learned that children had become increasingly likely to become victims of armed groups as the conflicts of 2003 and 2013 continued. Between 6,000 and 10,000 children had become connected with armed groups, whether forcibly recruited as child soldiers or used for sexual slavery and other purposes (see A/HRC/36/47/Add.1, para. 57). In Tunisia, the Working Group was informed that non-State armed groups recruited foreign children under the age

of 18. Those individuals were recruited through social media, smuggling networks operating across borders and direct contact with extremists operating in various towns. Boys as young as 17 years were recruited to fight in the Syrian Arab Republic. There were also cases of fathers taking children to that country. In addition, there have been allegations of human trafficking in camps in the Syrian Arab Republic run by foreign fighters, where children were reportedly sold to people in other countries (see A/HRC/33/43/Add.1, para. 63). In Belgium, the Working Group learned of a case of a 13-year-old child being recruited by foreign fighters (see A/HRC/33/43/Add.2, para. 21).

D. Motivational factors that result in children being associated with non-State armed groups

30. Children are lured into armed groups for various interrelated reasons. Across conflicts, there is no evidence of any single motivation or cause for child association with armed groups.⁶ Socioeconomic conditions, including poverty, duress, other forms of deprivation of resources and opportunities and physical and financial insecurity, are traditionally seen as the major factors behind children's enlistment in non-State armed groups. Some children living in conflict-affected areas become associated with these groups in order to be reunited with their family members or simply because of a lack of alternatives, especially when armed groups are in physical and economic control of the community. In the Democratic Republic of the Congo, some girls joined armed groups to escape the constant and terrifying attacks on their villages. Others joined to escape poverty and hunger. These girls were reportedly lured to join armed groups as they believed from their peers that they could obtain money and goods from the groups.⁷ A 17-year-old Iraqi boy joined Islamic State in Iraq and the Levant (ISIL) for the purpose of receiving free medical treatment for his heart condition.⁸

31. Research shows that children living in areas controlled by armed groups, such as Syrian children living under the control of ISIL, often cited the need to support themselves and their families as a reason for joining these groups. On the other hand, children and young people who travel from outside appear less motivated by financial incentives. Indeed, many of those travelling from outside the Syrian Arab Republic actually lose money by joining an armed group, as they have to pay to be smuggled into the country.⁹ The Working Group acknowledges that certain structural motivating factors alone cannot justify the phenomenon of foreign children from peaceful and stable settings being lured into terrorist groups in armed conflicts. One of the focuses of the Working Group's study on foreign fighters was to examine the motivational factors causing many individuals to leave their country of origin or habitual residence to become involved in violence as part of an insurgency or non-State armed group in an armed conflict. Some of those foreign children joined armed groups for ideological reasons, and some joined because of internal feelings, for example a feeling of revenge, a sense of purpose or a need for a sense of belonging.

32. As demonstrated by those children travelling from peaceful places to fight in armed conflicts, although the vast majority of children associated with armed groups are forcibly abducted or recruited, there are a few cases where children seem to have joined armed groups "voluntarily". Regarding these "voluntary" recruits, research shows that, even if it appears voluntary to the individual child, from a psychological and social point of view children's choice to join and remain in armed groups cannot be considered "voluntary". For

⁶ Siobhan O'Neil and Kato Van Broeckhoven, "The road to a better future", in O'Neil and Van Broeckhoven, *Cradled by Conflict*.

⁷ Child Soldiers International, "What the girls say: improving practices for the demobilisation and reintegration of girls associated with armed forces and armed groups in Democratic Republic of Congo" (London, 2017). Available at www.child-soldiers.org/Handlers/Download.ashx?IDMF=e57e9cb2-cd70-4dc2-8681-e29bc6f3622b.

⁸ Mara Revkin, "I am nothing without a weapon — understanding child recruitment and use by armed groups in Syria and Iraq", in O'Neil and Van Broeckhoven, *Cradled by Conflict*, pp. 103–140.

⁹ O'Neil and Van Broeckhoven, "The road to a better future".

various reasons, children have no or limited access to information concerning the consequences of their choice; they neither control nor fully comprehend the structures and forces that they are dealing with; they have little knowledge and understanding of the medium- and long-term consequences of their actions.¹⁰ Furthermore, children are often drugged or submitted to a process of "brainwashing" in order to control them. Research shows that the difficulty of maintaining neutrality in conflict areas also creates incentives for children to join armed groups, especially when there is no benefit to maintaining neutrality because even those who try to remain neutral are perceived by others as aligning with one side or the other.¹¹

33. In the present report, the Working Group focuses on the economic and material motivations of the recruitment of children by non-State armed groups. From the perspective of non-State armed groups, children are not only recruited as substitutes for adults, but sometimes have comparative advantages over them. The rationale behind the choice of child recruits generally lies in the assumption that, owing to their young age and immaturity, children can be easily intimidated, manipulated and indoctrinated. They tend to listen to the commanders and follow their orders without questioning them. In addition, children are also seen as less costly than adult recruits, because they receive fewer resources and less equipment. Children are seen as cheap labour because they are willing to work for lower wages than adults, and they are usually too young to have dependents — spouses and children — for whom some non-State armed groups provide additional benefits. For example, even though ISIL generally pays the same salary to adult fighters and those under 18 years, adult fighters receive an additional stipend for spouses and children, and sometimes housing for their families.¹²

34. Many armed groups take advantage of the poverty and financial insecurity of the populations affected by armed conflicts to attempt to recruit young children. Their offers seem tempting for poor children who live in an environment of high insecurity. For example, children fighting with ISIL are reportedly paid like adults (see A/68/878, para. 145). In the Syrian Arab Republic, many children continue to be recruited by non-State armed groups for modest salaries to support their families. The promised monthly salary is an incentive for impoverished families to agree to the recruitment. In Al-Bab, Aleppo, ISIL offers between \$100 and \$150 monthly to young men and boys, some only 14 years old, if they join (see A/HRC/33/55, para. 117). A former combatant of the Free Syrian Army and Jhabat Al-Nusra indicated in an interview that he had joined the FSA at the age of 14 years and later switched sides to Jhabat Al-Nusra because it was the highest-paying armed group in his area. He stated that he did not care about the ideology of either group and it was always just a matter of business. According to this former combatant, many parents encouraged their children to attend the Jhabat Al-Nusra indoctrination courses in order to obtain the free food that the group provided for students. Some of the students went on to enlist as fighters just because they wanted food and money.¹³ Children living in towns and villages without access to education are disproportionately vulnerable to recruitment. Some child soldiers are even recruited by non-State armed groups from refugee camps in neighbouring countries. In this context, economic incentives also contribute to the recruitment of these children.

35. The Working Group stresses that the incentives for children to be associated with non-State armed groups may also go beyond monetary rewards. Some groups seek to recruit local or foreign children or entire foreign families by providing food, goods,

¹⁰ Elisabeth Schauer and Thomas Elbert, "The psychological impact of child soldiering", in *Trauma Rehabilitation After War and Conflict*, Erin Martz, ed. (New York, Springer-Verlag, 2010), pp. 311–360.

¹¹ Siobhan O'Neil, "Trajectories of children into and out of non-State armed groups", in O'Neil and Van Broeckhoven, *Cradled by Conflict*; Revkin, "I am nothing without a weapon"; Hilary Matfess, Graeme Blair and Chad Hazlett, "Beset on all sides: children and the landscape of conflict in North East Nigeria", in O'Neil and Van Broeckhoven, *Cradled by Conflict*; Drumbl and Rona, "Navigating challenges in child protection".

¹² Revkin, "I am nothing without a weapon".

¹³ Ibid.

weapons, accommodation and other types of material gain. For example, ISIL is attracting foreign families by providing food, salaries and accommodation worth over \$1,000 a month to those who immigrate with their families to join the movement. As some have observed, the more these groups are successful at creating a whole new society, the more they are able to attract entire families.¹⁴

E. Human rights impact

36. The recruitment and use of children in armed conflicts by non-State armed groups is itself a grave violation of international law. Child victims who have been forced or lured into armed groups suffer a broad range of human rights abuses. These include abuses related to their right to life, right not to be subjected to torture or sexual abuse, right to be protected from economic exploitation and from performing hazardous work, right to the enjoyment of the highest attainable standard of health, right to education and right to freedom of thought, conscience and religion. The abusive practices children experience when they are associated with non-State armed groups amplify one another, and a child who experiences one is likely to experience others.¹⁵

37. Once recruited, child soldiers are forced to carry out various tasks. Some of them may serve as porters, cooks or domestic workers; some are ordered to loot or steal; some are forced to beat and kill civilians; some children are sent into combat on the front lines, or even to conduct suicide missions. Most of the girls are raped, used as sex slaves or forced to be "wives" to other soldiers in the group. Some armed groups even force child soldiers to commit cruelties and atrocities against their own family or community members. Such practices were intended to ensure that these children would have no family to escape to and that they would be stigmatized and not accepted back by their communities. The perception of the community about the armed group with which the children associate and the roles the children played in the armed group does indeed hamper the reintegration and rehabilitation process of these former child soldiers. The terror inflicted in the community also creates collective trauma. Research shows that community leaders, elders and local religious leaders, who are traditionally expected to play an essential role in the reintegration process of former child soldiers, are now themselves affected by the violence, thus impeding the traditional social healing or coping mechanisms.¹⁶

38. Negative attitudes towards former child soldiers create obstacles in reintegrating them socially and economically into their local communities. The risk of re-recruitment increases when these former combatants are not provided with alternative job opportunities. Furthermore, in a society where there is a significant number of former child soldiers, the failure of rehabilitation and reintegration may have a negative impact on the economic and social development of the society.

39. The Working Group also notes with great concern that some children who had been entangled in the violent environment later became active members of the group that initially abducted them. The Working Group's visit to the Central African Republic in 2016 coincided with the beginning of the International Criminal Court trial in the case of *Prosecutor v. Dominic Ongwen*. Ongwen was allegedly abducted by the Lord's Resistance Army when he was 10 years old and later became a top commander in that organization. In December 2015, he was charged with a total of 70 counts of crimes against humanity and war crimes allegedly committed after 1 July 2002 in northern Uganda. In cases where children may have committed acts of atrocity during their association with armed groups,

¹⁴ Dallin Van Leuven, Dyan Mazurana and Rachel Gordon, "Analysing the recruitment and use of foreign men and women in ISIL through a gender perspective", in *Foreign Fighters under International Law and Beyond*, Andrea de Guttry, Francesca Capone and Christophe Paulussen, eds. (The Hague, T.M.C. Asser Press, 2016), pp. 97–220.

¹⁵ Revkin, "I am nothing without a weapon".

¹⁶ A. Dyregrov, R. Gjestad and M. Raundalen, "Children exposed to warfare: a longitudinal study", *Journal of Traumatic Stress*, vol. 15, No. 1 (2002), pp. 59–68.

the Working Group emphasizes that victims hurt by the violent acts of these children may have suffered greatly and that they equally deserve justice and reparation.

7. Gender perspective

40. Boys and girls serve different tasks in armed groups. The majority of girls are recruited for sexual purposes. Research shows that girls abducted by armed groups are almost universally raped.¹⁷ In the contexts of the Syrian Arab Republic and Iraq, girls and women appear to be used by armed groups as part of the recruitment appeal to boys and men. For groups with state-like ambitions, marrying off girls and women also helps ensure a future generation of supporters and bolsters their nation-building projects.¹⁸ Girls' participation in armed groups is considered central to sustaining a force because of their productive and reproductive labour.¹⁹ Like the boys, girls associated with armed groups often carry out tasks such as cooking, domestic work and looting. Girls are also forced to participate in combat or carry out suicide missions. In addition, as a result of sexual violence, including rape and sexual slavery, many girls experience forced pregnancy and give birth without any assistance or care. They also have to rear their children, who are expected to become new members of the group. As a result, many girls suffer from sexually transmitted diseases, complications of pregnancy, gynaecological diseases and chronic health problems.

41. Once returned to their communities, girls and women who are perceived to have had sexual relations with members of armed groups, especially those who have brought back their children by combatants of the armed groups, are especially stigmatized. These girls are severely hampered in their reintegration into the local community. Many of the girls are abandoned by their families, despite the fact that they were victims of abduction, rape and other human rights violations. Since most communities consider the children of combatants of armed groups as objects of shame, often the girls are forced to choose between their child and their community.²⁰ Consequently, many girls, although returned to their communities, are isolated or homeless.

G. Private military and security companies and former child soldiers

42. As wars and military functions continue to be "outsourced" to private military and security companies in order to reduce cost, some companies have reportedly recruited former child soldiers to take part in active combat or guard the military facilities of a State party to the conflict. Owing to the multiple layers of contracts involving subcontractors on the ground, the lack of effective oversight and the absence of a proper vetting process, it is very difficult to know the exact number of former child soldiers recruited by private companies.

43. The Working Group is concerned about allegations of recruitment of former child soldiers from Sierra Leone and Uganda by private military and security companies to execute military operations in Afghanistan, Iraq and elsewhere. The motivations of former child soldiers to engage with private military security companies can result from a failure to reintegrate, especially if the former combatant is not economically reintegrated into the society; for example, if there is a lack of alternative job opportunities. In this context, there is a clear economic motivation from the perspective of these companies, since former child soldiers are considered cheap labour and these former combatants have experience in combat and armed conflict in general. For instance, a Ugandan former child soldier

¹⁷ Susan McKay and Dyan Mazurana, *Where Are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War* (Montreal, Rights and Democracy, 2004).

¹⁸ O'Neil and Van Broeckhoven, "The road to a better future".

¹⁹ Schauer and Elbert, "The psychological impact of child soldiering".

²⁰ Redress Trust, *Victims, Perpetrators or Heroes? Child Soldiers Before the International Criminal Court* (London, 2006).

contracted through a private company to guard United States military facilities in Iraq might make \$600 a month, with much of it owed back to the brokers and middlemen who helped him get from Africa to Mesopotamia. The Ugandan could also be fined by his supervisor up to \$100 for lying, sleeping on duty or some other infraction. A supervisor who was a United States citizen might make \$20,000 a month, tax free and with benefits, while in Iraq.²¹

44. Among various issues related to former child soldiers and private military and security companies, the Working Group stresses that, in the vetting process, recruiting companies should distinguish those individuals who have committed war crimes or human rights violations when they were associated with armed groups from those who were not responsible for crimes that were committed. While individuals who have committed war crimes or human rights violations are not suitable for security services, it is essential to fight against stigmatization and discrimination to ensure that individuals who have not been convicted of any crime, but have merely formerly associated with armed groups, have access to the job market. The Working Group emphasizes that States are obliged to provide appropriate social reintegration, including vocational training, and psychological recovery services for former child soldiers (see Committee on the Rights of the Child general comment No. 16).

45. Taking into consideration the violent experiences to which children are exposed during their association with armed groups, to assist their psychological recovery it is crucial to avoid subjecting them to situations where they are at risk of being re-traumatized. Research shows that the cascades of defence mechanisms that a survivor has gone through during the traumatic event can replay themselves whenever the fear network, which has evolved peritraumatically, is reactivated by internal or external triggers.²² Thus security related tasks with private military and security companies should not be considered as appropriate for children who have been associated with armed groups. Job openings such as administrative, logistics and other general supporting service posts at private military and security companies might attract former child soldiers, especially those who do not have alternative opportunities. Nevertheless, the Working Group is of the view that, although these job opportunities could be a form of reintegration of former child soldiers, they should only be considered as a last resort.

P. Responses to children associated with non-State armed groups

46. In April 1997, as part of the effort to address the issue of children serving in armed forces, non-governmental organizations and the United Nations Children's Fund (UNICEF) held a symposium in Cape Town, South Africa, to develop strategies for preventing recruitment of child soldiers into the armed forces and for demobilizing child soldiers and helping them reintegrate into society. The Cape Town Principles and Best Practice on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa were the outcome of this symposium.

47. Building upon the Cape Town Principles and Best Practices, in 2007 UNICEF and the Government of France co-hosted the International Conference on Children involved in Armed Forces and Armed Groups: Free Children from War. During this conference, the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups were developed to protect children from unlawful recruitment or use by armed forces or armed groups. The principles and guidelines were intended to influence the behaviour of a broad range of actors, including States, military and security actors (State and non-State), human rights actors, humanitarian actors, development actors and associated organizations, including United Nations organizations, other intergovernmental actors, national and international organizations and community-based organizations. While some of these actors have a specific mandate or role in relation to children, all have a role to play and broad

²¹ Peter Van Buren, *We Meant Well: How I Helped Lose the Battle for the Hearts and Minds of the Iraqi People* (New York, Metropolitan Books, 2012).

²² Schauer and Elbert, "The psychological impact of child soldiering".

responsibility for the rights and well-being of children associated with armed forces or groups. Ministers and representatives of countries that participated in the Paris conference endorsed the principles through a declaration, the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups.

48. The Working Group welcomes and supports these initiatives at the international level. At the national level, the Working Group urges States to take legislative measures to criminalize the recruitment and use of children in hostilities and bring perpetrators to justice. The Working Group emphasizes that States bear the primary responsibility in protecting the rights of the child and must prevent the recruitment of children into government armed forces. The Special Representative of the Secretary-General for Children and Armed Conflict pointed out in her report (document A/HRC/37/47) that the engagement of the United Nations with government armed forces also catalysed interaction with non-State armed groups to respond to and prevent violations. She further stated that over 50 per cent of armed groups included in the annex to the annual report of the Secretary-General on children and armed conflict for the recruitment and use of children (document A/72/361-S/2017/821) are active in countries where government forces are also listed, illustrating that the actions of armed groups are influenced by the conduct of government forces (see A/HRC/37/47, para. 28).

49. At the time of submission of the present report, 167 Member States of the United Nations are parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which demonstrates their commitment to prohibiting and criminalizing the recruitment and use of children in armed conflicts. Many States do indeed criminalize such practices in their domestic legislation.

50. In addition to criminalizing the recruitment and use of children in hostilities, some States have also demonstrated support for measures that could contribute to the prevention and protection of children from recruitment into conflicts by non-State armed groups. In the United States of America, the Child Soldiers Prevention Act of 2008 prohibits certain forms of United States military assistance to the governments of countries that either recruit or use child soldiers in their armed forces or support armed groups, including paramilitaries, militias or civil defence forces, that recruit and use child soldiers.

51. As of February 2018, 73 States have endorsed the Safe Schools Declaration, which was developed through consultations led by the Governments of Argentina and Norway. States that join this initiative express their commitment to protecting students and educational facilities and ensuring the continuation of education, which could further contribute to the protection of children and youth from exploitation. Preventing the use of educational facilities for military purposes can also reduce the risk of recruitment and use of children by armed groups.

52. The Working Group has noted with concern that many States treat children formerly associated with non-State armed groups as security threats rather than victims. Some States are taking punitive measures against these children. For example, in Afghanistan, Iraq, Lebanon, Libya, Nigeria, Somalia, the Sudan, the Syrian Arab Republic and Yemen, children are deprived of their liberty for their alleged association with armed groups (see A/72/361). This type of response may counteract efforts to separate children from armed groups. It may reduce the possibility of neutrality and is likely to deter children from leaving armed groups.²³ Some States have implemented administrative measures to discourage people from returning from conflict zones, and have gone so far as to refuse to let children back into their countries after suspected involvement with an armed group.²⁴ Some children also face punishment upon their return to their countries of origin. Many States have explored the removal of citizenship as a way of ensuring that foreign terrorist fighters will find it difficult to return to their home State. Those efforts have applied mainly to people with dual citizenship, in order to avoid their becoming stateless (see A/71/318,

²³ O'Neil and Van Broeckhoven, "The road to a better future".

²⁴ Drumbl and Rona, "Navigating challenges in child protection".

para. 22). In Australia, children as young as 14 years old could face revocation of their citizenship for accused terrorism offences.²⁵

53. Some States have adopted measures to prevent children from travelling abroad to join terrorist groups. However, some of these measures also seem punitive in nature. For instance, in Denmark, authorities may confiscate minors' passports and refuse to issue new ones unless the parents agree. In the Netherlands, the Child Care and Protection Board may impose family supervision, custody in childcare institutions, curfews and confiscation of identity documents of aspiring teenage combatants and children whose parents intend to travel to a conflict zone.²⁶ Thus, it is essential that States adopt the most appropriate measures that seek protection, and not punishment, of children and their families.

IV. Conclusions and recommendations

General recommendations

54. The Working Group urges Member States to criminalize in national legislation the recruitment and use of children under the age of 18 years in armed conflict. It stresses the importance of investigating, prosecuting and sanctioning those responsible for such crimes at the national level, and providing a remedy to victims of violations committed by all persons and entities within its jurisdiction. The Working Group calls upon Member States to support international efforts in this respect as well.

55. The Working Group urges all Member States that have jurisdiction over private military and security companies that recruit children to put an end to their cooperation with such companies and to prosecute those responsible for such recruitment. Additionally, it recommends that States end any cooperation with or support for any non-State armed groups that recruit and use children in armed conflict.

56. The Working Group urges Member States to treat children allegedly associated with non-State armed groups primarily as victims and to respect the special protections that international law accords children.

57. The Working Group stresses that States should set a minimum age of criminal responsibility below which a child cannot be found to have the capacity to engage in criminal conduct. When children have committed crimes during their association with armed groups, the best interests of the child should remain a primary consideration. This means that judicial proceedings should be undertaken as a last resort, the child should be tried in a juvenile justice system, the privacy of the child should be respected, the child should be able to participate effectively in the proceedings and sentences should be rehabilitative rather than punitive.

58. The Working Group is concerned about the current punitive approach taken by some States to children associated with armed groups and reminds all States of their legal obligation to uphold the principle of the best interests of the child. With regard to the use of detention against children for their alleged association with armed groups, the Working Group is of the view that detention of children should be used only as a last resort in compliance with international juvenile justice standards.

59. The Working Group stresses that responses to the phenomenon of the recruitment and use of children in armed conflict should focus on the separation, rehabilitation and reintegration of children. States should address root causes that foster child recruitment into armed conflicts and take preventive, not punitive, measures aimed at protecting children from being recruited into armed conflict.

²⁵ Francesca Capone, "'Worse' than child soldiers? A critical analysis of foreign children in the ranks of ISIL", *International Criminal Law Review*, vol. 17, No. 1 (2017), pp. 161–185.

²⁶ *Ibid.*

60. The Working Group stresses that reintegration of children who have been associated with armed groups is crucial to ensure long-lasting peace, security and sustainable development in post-conflict societies. Failure to reintegrate this group of children socially and economically into society may increase the risk of re-recruitment of these individuals and can cause substantial economic development issues in the community and society at large.

61. The Working Group encourages Member States to establish mechanisms for the reintegration into society of children who have been associated with armed groups. The reintegration process should include psychosocial and education programmes and vocational training. Specific attention should be paid to girls to address their social and psychological needs.

62. The Working Group encourages States to demonstrate their commitment to protecting children in the context of armed conflict by ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. States are also encouraged to endorse the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups to protect children unlawfully recruited or used by armed forces or armed groups.

Recommendations related to private military and security companies

63. Job openings with PMCSs might seem attractive as a potential solution for the reintegration of former child soldiers. The Working Group emphasizes that the re-recruitment of former child soldiers into the security industry does not help to break the cycle of violence. Owing to the nature of the industry, the work environment may trigger children's memory of the traumatic events they have experienced during their association with the armed group. Thus the Working Group stresses that security-related tasks at private military and security companies should not be considered as primary options for former child soldiers. When there is no alternative solution, administrative, logistics and general supporting service posts at private military security companies could be considered as a last resort to reintegrate former child soldiers.

64. The Working Group notes that, in Switzerland, the Federal Act on Private Security Services Provided Abroad requires all undertakings governed by the Act to declare their activities abroad to the Private Security Services Section and to become a member of the International Code of Conduct for Private Security Service Providers. The Working Group encourages Member States to include similar provisions in their domestic legislation.

Recommendations related to the International Code of Conduct for Private Security Service Providers' Association and the Montreux Document Forum

65. While the International Code of Conduct for Private Security Service Providers clearly requires the commitment from its signatory companies not to hire individuals under the age of 18 to carry out security services, the Working Group emphasizes that the International Code of Conduct for Private Security Service Providers' Association should put in place safeguards to ensure that not only its signatory companies but also all subcontracting companies are in compliance with this requirement.

Recommendations related to non-State armed groups

66. The Working Group welcomes the signing of action plans to prevent the recruitment and use of children in armed conflict, concluded between the United Nations and non-State armed groups listed in the annex to the annual report of the Secretary-General on children and armed conflict regarding the recruitment and use of children.

67. The Working Group urges all non-State armed groups to end the recruitment and use of children under the age of 18 years and to cooperate with efforts to separate children who are associated with armed groups from those groups.



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**Promotion and protection of all human rights, civil,
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including the right to development**

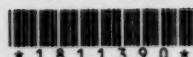
Report of the Independent Expert on the enjoyment of all human rights by older persons

Note by the Secretariat

Summary

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, prepared pursuant to Council resolution 33/5. In the present report, the Independent Expert examines the impact of the social exclusion of older persons — an issue that she considers crucial to addressing existing protection gaps. The report provides an overview of the global policy framework and analyses social exclusion concepts, their various manifestations and the impact on the human rights of older persons. The analysis is followed by the Independent Expert's conclusions and recommendations aimed at assisting States in designing and implementing appropriate and effective frameworks to ensure the promotion and protection of the rights of older persons.

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Report of the Independent Expert on the enjoyment of all human rights by older person

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I. Introduction

1. The present report is submitted by the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, pursuant to Human Rights Council resolution 33/5. She examines, to the extent possible, social exclusion concepts and their various manifestations, as well as related challenges and protection gaps in the exercise of all human rights by older persons. The Independent Expert considers that this is a key issue, which requires further consideration, and stresses the need for a human rights-based approach in addressing any related protection gaps.

II. Activities of the Independent Expert

2. During the reporting period, the Independent Expert visited Georgia from 12 to 22 March 2018 (see A/HRC/39/50/Add.1) and Montenegro from 23 to 30 April 2018 (see A/HRC/39/50/Add.2). She expresses her appreciation to the Governments of those countries for their excellent cooperation before, during and after her visits and the fruitful and constructive dialogue.

3. On 3 and 4 October 2017, the Independent Expert held her first global consultation in Santiago on the theme of "The human rights of older persons and non-discrimination — putting older persons on an equal footing with others". The deliberations can be found in the summary of the event.¹ The meeting was organized in collaboration with the Pontifical Catholic University of Chile, the Economic Commission for Latin America and the Caribbean, the Group of Friends of Older Persons in New York and the Group of Friends of the Human Rights of Older Persons in Geneva,² and with the support and presence of the Chair of the Open-ended Working Group on Ageing and the Special Envoy of the Secretary-General on Disability and Accessibility. The Independent Expert also wishes to express her gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and its Special Procedures Branch for the support it provided in relation to the global consultation.

4. The consultation brought together an array of actors and stakeholders, including numerous representatives from States, civil society, national human rights institutions and experts from academia, regional human rights mechanisms and international organizations. Some 300 participants attended the plenary sessions and 17 keynote speakers from all over the world intervened and exchanged views and good practices on the full spectrum of the rights of older persons. Concrete proposals were put forward, including on how to build on the momentum of the cross-regional consensus generated by the Independent Expert and her comprehensive thematic report to the Human Rights Council in 2016 (A/HRC/33/44) towards the adoption of an international instrument on the protection and promotion of the rights of older persons.

5. Participants in the meeting sought to develop concrete proposals and identify actionable recommendations to enhance the protection of older persons and ensure their enjoyment of human rights everywhere and at all times. The objective was threefold: first, to sensitize multipliers and increase their receptiveness for the human rights concerns of older persons and to inform them about the current global state of affairs with regard to promotion and protection efforts in relation to the human rights of older persons in general. Secondly, to discuss lacunae and potential strengthening tools for the protection of the rights of older persons based on state-of-the-art research and the findings of specialists in various relevant fields, thereby ensuring an informed debate among all stakeholders. Through this approach, participants sought to break through existing silo thinking, since the concerns of older persons cut across a number of areas. The presentations exhibited the

¹ Rosa Kornfeld-Matte and Carmen Luz Belloni, eds., "Human rights of older persons and non-discrimination" (2017).

² The Group of Friends of the Human Rights of Older Persons was launched by Argentina and Slovenia on 8 June 2016.

latest scientific evidence and covered a broad range of issues of relevance to older persons and ageing, including the need to shift from an assistance model to a human rights-based approach towards older persons; the right to health; autonomy and independence; social inclusion for a better ageing process; the social and economic security of older persons; human rights, ageing and well-being; and regional visions of the human rights of older persons. Thirdly, participants explored the way forward and avenues for global institutional strengthening. The Special Envoy on Disability and Accessibility also made a special presentation entitled "Human rights instrument: from proposal to application — the international Convention on the Rights of Persons with Disabilities".

6. The Independent Expert welcomes the appointment of María Soledad Cisternas Reyes as the Special Envoy on Disability and Accessibility. The consultation exemplified the important contribution of this new mandate for the promotion of the rights of older persons with disabilities, with a particular emphasis on accessibility for all. The Independent Expert wishes to recall in this regard that older persons constitute the most heterogeneous of all age groups and that many of them continue to face significant protection gaps. While some older persons will become increasingly dependent on the help of others in old age for several reasons — such as illness, impairments or loss of mobility — and may require varying degrees of specific care, others may be in good health and may be able to live independently or autonomously throughout their lives, particularly if adequate attention is paid to their specific needs.

7. In discussing the way forward, participants in the consultation facilitated a dialogue between both Groups of Friends and existing mechanisms, namely the Open-ended Working Group on Ageing, the Special Envoy on Disability and Accessibility and the Independent Expert. That also allowed a discussion of next steps, in recognition of the progress achieved so far, including that the cross-regional consensus had been consolidated and that the discussions in New York had gained new impetus and direction through the cross-fertilization of the various mechanisms and the findings in the comprehensive thematic report of the Independent Expert in 2016.

8. On 25 and 26 October 2017, the Independent Expert, together with the Special Rapporteur on the rights of persons with disabilities, hosted the first expert group meeting on supporting the autonomy and independency of older persons with disabilities in New York, drawing on the report of the Independent Expert on the autonomy and care of older persons (A/HRC/30/43) and the findings in her comprehensive thematic report, which marked a shift in the discussion on older persons. Participants in the expert meeting discussed the intersectionality between disability and ageing in the exercise of autonomy and independence, and explored the potential of international and regional human rights instruments, in particular the Convention on the Rights of Persons with Disabilities, to ensure accessible, appropriate and affordable community-based support services.

9. The expert meeting identified a number of gaps, such as the lack of standards on the rights of older persons with disabilities, the lack of a disability perspective in ageing (or ageing with disability) in public policies, legislation with arbitrary age provisions, the negative image of ageing, the lack of disaggregated data on older persons and the insufficient participation of older persons with disabilities in discussions on those issues. The experts agreed that closer cooperation between communities of older persons and persons with disabilities was fundamental, including in the area of advocacy, where the latter had more experience. That could result in increased awareness of and references to the rights of older persons with disabilities in the United Nations human rights machinery and its instruments, including the Convention on the Rights of Persons with Disabilities. In that regard, experts noted that only 0.3 per cent of all recommendations made in the universal periodic review process of the Human Rights Council were focused on the rights of older persons.

10. In relation to the previous annual report of the Independent Expert on the impact of automation on the human rights of older persons (A/HRC/36/48), the mandate participated in a conference on human rights in a digital age in Geneva on 24 May 2018. The objective was to identify the opportunities provided by big data, artificial intelligence and associated technologies and their potential human rights implications, including and beyond privacy.

11. On 17 and 18 April, the Independent Expert participated in an expert round table on palliative care for older persons hosted by the International Association for Hospice & Palliative Care, at which she gave a keynote address on the theme of "Leaving no one behind: palliative care for older persons in the 2030 Agenda". She provided an overview of the global demographic dynamics, with a focus on the situation in Latin America, and the current state of international human rights law. She outlined the global progress made since she assumed her mandate and the existing protection gaps in general and with regard to care models for older persons.

12. The Independent Expert would like to express her appreciation to the Office of the United Nations High Commissioner for Refugees for the opportunity to contribute, both individually and jointly, with a group of non-governmental organizations, to the draft global compact on refugees, focusing, *inter alia*, on the need for disaggregated data and for recognizing and catering for the specific needs of older persons affected by forced displacement.

13. On 11 June 2018, the Independent Expert participated as speaker in two panel discussions during an intersessional seminar on the protection of the family and human rights of older persons, pursuant to Human Rights Council resolution 35/13. Outlining the international framework for the protection of the family and human rights of older persons, the Independent Expert stressed that the assistance and support provided by family members and communities could not substitute for the obligation of States to promote and protect all human rights of older persons. She also made concrete and solutions-oriented recommendations for greater protection of the family and the human rights of older persons in the light of the radical changes some societies are undergoing, such as changes in family patterns or lifestyles, as well as challenges related to migration and urbanization and the progressive erosion of the traditional multigenerational family setting, which leaves more and more older persons without a family and therefore without care. In particular, she stressed the need for home care services and other forms of alternative care support, targeted and non-contributive social protection systems and public awareness campaigns to counter stereotypes about older persons, which are among the root causes of violence against and maltreatment and abuse of older persons, which often occur in the family setting.

14. The Independent Expert has identified elder abuse as a priority area for her mandate and has continued to undertake targeted activities in this area. In a statement to mark World Elder Abuse Awareness Day on 15 June 2018, she drew attention to the fact that many older persons are at risk of being abused by their own relatives or those they trust. Financial abuse of older persons is rampant but largely invisible. She stressed that the older person's best interests had to be the overriding consideration when differentiating between a transfer of assets made with consent and an abusive one, and noted that financial abuse reflected a pattern of behaviour rather than a single event, and typically occurred over a period of time. She called on everyone to report suspected cases of abuse of older persons, as this was one of the few ways to stop financial abuse. Together with the Inter-American Commission on Human Rights, the Independent Expert also issued a press statement to raise awareness of World Elder Abuse Awareness Day.

15. The Independent Expert also contributed to a side event on the occasion of World Elder Abuse Awareness Day on the theme of "Violence, abuse and neglect of older persons: a violation of human rights", which was co-organized by OHCHR, the World Health Organization (WHO), the Group of Friends of the Human Rights of Older Persons and the NGO Committee on Ageing, Geneva. In preparation for the discussion at the upcoming session of the Open-ended Working Group on Ageing, in her message the Independent Expert focused on how different forms of violence, abuse and neglect had a direct impact on the denial of autonomy and a good standard of care.

16. At the time of the submission of the present report, the Independent Expert was also scheduled to participate, in accordance with her mandate, at the ninth session of the Open-ended Working Group on Ageing, to be held in New York from 23 to 26 July. The Independent Expert will contribute to the two focus areas of the session, namely autonomy and independence and long-term and palliative care in the context of measures to enhance the promotion and protection of the human rights and dignity of older persons.

III. Social exclusion: concepts, manifestations and the impact on the human rights of older persons

A. Background

17. Social exclusion refers to the separation of individuals and groups from mainstream society. While there is no generally agreed definition, the social exclusion of older persons is a complex process that involves the lack or denial of resources, rights, goods and services as people age and the inability to participate in societal relationships and activities, available to the majority of people across the varied and multiple domains of society. It affects both the quality of life of older persons and the equity and cohesion of an ageing society as a whole. Unlike related concepts such as poverty and deprivation, social exclusion provides a means to understand the dynamic and multilevel construction of old-age disadvantage.³

18. Social exclusion is a relative concept, which refers to the fact that it is assessed against a population base, for example the general population. It further involves agency: older persons are being excluded against their will or lack the agency to achieve integration for themselves, or choose to exclude themselves from mainstream society. While the social exclusion of younger people is dynamic or processual, with individuals and groups moving in and out of exclusion and experiencing different forms of exclusion over time, the experience of older persons vulnerable to exclusion may be less prone to change. Most definitions acknowledge the multidimensionality of social exclusion, for example in terms of the impact of exclusion on various domains of the lives of older persons.⁴

19. There are a number of risk associations or potential drivers of old-age exclusion, such as living alone, gender, ethnicity, or being very old. The relationship between social categorizations, such as gender, social class and ethnicity, and exclusion is complex, given the correlation with other risk factors, such as living alone and income. While gender, for instance, is not a significant predictor of overall exclusion, it is connected to certain individual domains, i.e. older women are more likely to be excluded from cultural activities, while they are less likely to be excluded from social relationships.⁵

20. Exclusion from material and financial resources in later life is one of the manifestations of social exclusion. Poverty can exacerbate the denial of basic human rights as well as limit choices and opportunities for a tolerable life. In many societies, older persons comprise a disproportionate number of the poor, the persistent poor and the poorest among the poor. In the countries of the Organization for Economic Cooperation and Development (OECD), 12.5 per cent of individuals aged over 65 live in relative income poverty and older women are at greater risk of poverty than older men.⁶ Risk factors for old-age poverty include a lack of access to regular income, to work and to health care, declining physical and mental capacities, and dependency within the household. Moreover, as people grow older, they tend to be progressively excluded from the formal and informal work market, but are often not or insufficiently protected by social security systems.

21. While adequate material resources are an important prerequisite for the social integration of older persons, there are other central aspects, such as the participation and integration of older persons in recognized social roles and the ways in which exclusion operates at a spatial level, namely how neighbourhoods are organized or perceived.

³ See Kieran Walsh, Thomas Scharf and Norah Keating, "Social exclusion of older persons: a scoping review and conceptual framework", *European Journal of Ageing*, vol. 14, No. 1 (March 2017).

⁴ See Peter Saunders, "Can social exclusion provide a new framework for measuring poverty?", Social Policy Research Centre, discussion paper No. 127, October 2003.

⁵ See Dylan Kneale, *Is Social Exclusion Still Important for Older People?*, the International Longevity Centre — UK, September 2012.

⁶ See OECD, *Pensions at a Glance*, 2017, p. 136.

22. More than half of the global population is currently living in cities, a number which is expected to rise dramatically in the next decades.⁷ Urban growth and demographic transformation are changing the way we experience urban environments throughout our lives and into older age. However, older persons are not routinely incorporated into the mainstream of thinking and planning around urban environments.

23. Urban spaces can act both as enablers and barriers for the realization and enjoyment of the right of older persons to lead dignified and autonomous lives. Rapid urbanization sometimes leads to gentrification, a process in which lower-income urban areas undergo significant change owing to an influx of investment and/or more affluent residents. In the process of gentrification, market interests tend to take precedence over the human rights of residents. It is not uncommon for public facilities, such as sheltered housing and community centres either to be closed down or privatized, thus demonstrating a diminishing role for the State in providing for its citizens. In that framework, a close consideration of ageing and urban change under the spectrum of social justice is considered necessary to ensure that the benefits of gentrification can be shared by all residents.

24. Gentrification, a term heavily loaded with both positive and negative connotations since it was first coined by Ruth Glass in 1964, is not easily understood, measured or operationalized. Characteristic elements of gentrification include capital reinvestment, the influx of high-income social groups, landscape changes and the displacement of poorer groups.⁸ It typically leads to an increase in housing costs, so low-income households, unable to find affordable housing, move towards the outskirts of the city in even more disadvantaged neighbourhoods than their previous residence. Loss of social ties also counts among one of the main risks of gentrification, as both those who leave and those who stay have to adapt to sharing their neighbourhood with strangers. On the other hand, those who remain in the gentrified area are also expected to benefit from improved levels of safety and services. Research in developing countries tends to refer to urban change, development or renewal and to slum clearance, rather than gentrification.

25. One of the main barriers to securing the rights of older persons on an equal basis with others and ensuring their social inclusion is the lack of acknowledgement of their contributions and of their untapped potential. That lack of understanding is deeply rooted in ageist stereotypes about what defines older persons. Prejudices about older persons being frail, sick and dependent drive their marginalization and legitimize exclusionary practices.⁹ Unlike other forms of discrimination, ageism is socially accepted and usually unchallenged, because of its largely implicit and sub-conscious nature. It is so pervasive in policy, planning and implementation that the ways in which older persons are left behind become invisible. It is essential to actively combat ageism, as this thinking impinges on the development of inclusive policies in general. In this regard, the Independent Expert stresses the importance of the global campaign to combat ageism initiated by WHO in 2016, which she fully supports.¹⁰

B. Global policy framework

1. Sustainable Development Goals

26. One of the major advances of the Sustainable Development Goals compared with the Millennium Development Goals is that they apply to developing and developed

⁷ See United Nations Department of Economic and Social Affairs, "World urbanization prospects: the 2014 revision (highlights)" (2014).

⁸ See Mark Davidson and Loretta Lees, "New-build 'gentrification' and London's riverside renaissance", *Environment and Planning A*, vol. 37, No. 7 (July 2005).

⁹ See World Economic Forum, *Global Population Ageing: Peril or Promise?* (2012); and Astrid Stuckelberger, Dominic Abrams and Philippe Chastonay, "Age discrimination as a source of exclusion in Europe: the need for a human rights plan for older persons" in *From Exclusion to Inclusion in Old Age: a Global Challenge*, Noah Keating and Thomas Scharf, eds. (Bristol, Bristol University Press, 2012).

¹⁰ See World Health Assembly resolution WHA69.3.

countries alike. Moreover, the 2030 Agenda explicitly acknowledges that human rights are essential components of sustainable development. The premise of the Goals to leave no one behind can help to promote inclusive development policies. That is particularly important because development approaches often fail to reflect the needs of older persons.

References to older persons in the framework of the Sustainable Development Goals are, however, rare. Target 2.2 specifically mentions older persons in terms of ending malnutrition. Some targets refer to "all" or people of "all ages" in relation to health, nutrition, education and tackling poverty. The language reflects the intention in the Goals to meet the needs of all social groups, which naturally includes older persons. It is also noteworthy that for most indicators for the Goals, implementation must be disaggregated by age. That is a precondition for policies to be able to specifically target older persons.

Particularly relevant for older persons is Goal 3, which aims to ensure healthy lives and promote well-being at all ages. It does not, however, include a specific target for older persons. Target 3.4, which aims to reduce premature mortality — defined as death before the age of 70 — from non-communicable diseases by one third, could exclude persons over the age of 70 from prevention, cure or care, even though more than half of deaths from non-communicable diseases occur in this age group. The reference to premature rather than preventable death seems to perpetuate prejudices that devalue the lives of older persons and create room for unequal treatment.

Goal 11 recognizes the important role that cities play in sustainable development. It addresses the upgrading of slums in target 11.1 and also aims to achieve improvements in terms of housing, transport, public outdoor spaces, air quality, civic participation and prevention and response to disasters. Importantly, it also explicitly mentions older persons under targets 11.2 (transport) and 11.7 (public spaces).

Goal 11, however, does not include a target on social participation and the prevention of isolation in urban environments, which is an issue of critical importance for older persons. While the provisions of Goal 11 may facilitate the creation of accessible environments, there is no stress on the need to ensure that older persons remain engaged in their communities. The lack of opportunities for older persons to participate may contribute to their social exclusion and consequently the decline of their mental and physical health. City planning should facilitate the participation of older persons in all spheres of life, foster intergenerational exchange, help them to maintain social contacts and avoid segregation, and establish networks of support for those people who are at risk of social exclusion.

Goal 4, which aims to ensure inclusive and quality education for all, is not met with targets and indicators that can effectively improve opportunities for lifelong learning. The actions foreseen are clearly targeted towards children, youth, women and persons with disabilities. Target 4.4, which seeks to increase the development of skills, is linked with jobs and employability, therefore limiting its relevance to those active in the labour market. That constitutes a missed opportunity to call for real opportunities for lifelong learning, which would enhance the inclusion of older persons and their contribution to their communities.

Goal 10 seeks to reduce inequalities. While it refers to age discrimination as a ground of discrimination, the focus at target level is on income inequalities, which fails to encompass the many other types of discrimination that older persons face. In addition, indicator 10.3.1 seeks to gather information about the proportion of the population reporting having felt personally discriminated against or harassed within the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law. That is deficient, as international human rights standards fail to adequately address all forms of discrimination of older persons. Age discrimination, while prohibited in several contexts, is legitimate in others. For example, mandatory retirement ages are considered acceptable in a number of countries, even though this infringes the right of older persons to work and earn a sustainable income. The lack of an internationally agreed definition of age discrimination in human rights law impedes States from a harmonized and equal application of Goal 10 for older persons.

Data and measurement constitute another challenge for the implementation of the Sustainable Development Goals. National and comparative surveys often operate with age

limits and do not include the very old and those living in institutions such as nursing homes, which considerably limits their informative value and the possibility of assessing the inclusion or exclusion of older persons. Moreover, data sets may reflect outdated, biased or incomplete views about older age. Typically, age cohorts, such as 60+, represent older persons as a homogeneous group. There is a lack of adequate differentiation that would allow reflection on the particular heterogeneity of the target group. Intersecting characteristics, such as being an older woman, an older migrant or an older person with a disability, are not necessarily accounted for. Data sets on poverty often fail to capture the real extent of the poverty older persons face. The focus on household income presupposes that older persons receive an equal share to other members of the household, whereas in reality the needs of children are often prioritized. Also, older persons may have additional needs, as a result, for instance, of their mobility limitations or health condition, which would actually require a larger share of the household income.

34. Ensuring that no older person is left behind requires more than simple references to "all ages". It is about recognizing the equal dignity and specific needs of older persons and about acknowledging and facilitating their past, present and future contribution to society through the application of a human rights-based approach to development.

35. While the Sustainable Development Goals seek to address some of the world's most blatant injustices, there is no specific focus on exclusion in older age or the neglect and discrimination of older persons, despite existing population dynamics. Mainstreaming existing human rights norms into the Goals was a colossal task. The lack of attention to the specific challenges older persons face, as opposed to the focus put on other groups, such as children or persons with disabilities, is certainly a reflection of the lack of a dedicated legal instrument for older persons.

36. The absence of dedicated human rights standards to ensure the inclusion of older persons has a negative impact on follow-up and implementation. The Danish Institute for Human Rights, for instance, has developed an online tool linking the Sustainable Development Goals to human rights obligations and aimed at helping to anchor implementation strategies to human rights obligations.¹¹ Similar efforts are being undertaken by OHCHR in linking the recommendations of the human rights mechanisms to the Goals in the Universal Human Rights Index. The few references to old age and older persons in international human rights law and in the Goals also result in there being little focus on this particular group by human rights mechanisms. Training materials and guidance targeting national implementation strategies are, as a result, unlikely to focus on older persons as a group. By contrast, the adoption of the Convention on the Rights of Persons with Disabilities and the obligations that derive from it sparked the publication of a wealth of material to guide the mainstreaming of disability rights into development policies.¹²

37. While the Sustainable Development Goals certainly represent an important opportunity to integrate the rights of older persons into the global development agenda, it remains unclear how the promise to leave no one behind will be met for older persons.

2. United Nations Conference on Housing and Sustainable Urban Development (Habitat III)

38. The New Urban Agenda adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) seeks to reinforce global efforts for sustainable development in the context of urbanization.¹³ It offers a set of guidelines for States, local and regional authorities, civil society, United Nations agencies and others. It reflects a vision of urban settlements in which all persons enjoy equal opportunities thanks to inclusive, fair, safe, healthy and sustainable environments and policies. While it is non-binding, the New Urban Agenda, alongside the implementation of the Sustainable

¹¹ See <http://sdg.humanrights.dk/>.

¹² See, for example, www.un.org/development/desa/disabilities/about-us/sustainable-development-goals-sdgs-and-disability.html.

¹³ See <http://habitat3.org/the-new-urban-agenda/>.

Development Goals and human rights instruments, can help to address the human rights concerns of older persons, particularly in the face of gentrification and the related social exclusion.

39. The New Urban Agenda contains a total of 27 references to ageing, older persons, intergenerational issues and age. That is significant, bearing in mind that the initial draft contained only three such references. There is a remarkable focus on the participation of older persons in decision-making and enabling them to become co-designers of urban policies and development plans (see paras. 42, 92, 148, 155 and 156). That approach creates a solid foundation for genuine citizen involvement and recognizes older persons as potential contributors to urban change. It must however be noted that the majority of the 27 provisions merely refer to age-responsive approaches to urban development. While the mainstreaming of age alongside gender responsiveness is a welcome development, it is less evident how this commitment will be applied in practice. The concept of responsiveness is likely to focus on needs, vulnerabilities and weaknesses, as opposed to promoting the full potential of older persons. In addition, it has been argued that when human rights instruments refer to age-appropriate measures they tend to reflect the requirement to take into account the needs of children and youth based on existing human rights obligations and not necessarily those of older persons. There is a risk that this may also be the case with regard to the implementation of the New Urban Agenda.

40. The notion of intergenerational exchange, mentioned twice in the New Urban Agenda (paras. 13 and 99) is noteworthy, as it provides some more guidance about the way in which to achieve inclusive cities. Paragraph 20 also contains a specific reference to non-discrimination on the basis of age and there is a requirement to ensure that older persons are not disproportionately affected by revenue policies (para. 34).

41. The New Urban Agenda also explicitly refers to gentrification (para. 97), when addressing urban regeneration and slum upgrading, even though its implications are rather narrowly defined, failing to address issues around income security, health and access to goods and services, among others. There also is a commitment to engage in participatory approaches to urban development, "avoiding spatial and socioeconomic segregation and gentrification, while preserving cultural heritage and preventing and containing urban sprawl". References to displacement (paras. 107 and 111) and evictions (paras. 31, 107 and 111), seek to guarantee the right to housing, whereas in paragraph 114 there is a mention of transportation as a way to minimize the impact of displacement.

42. In paragraph 57 of the New Urban Agenda, which refers to the commitment to promote work and livelihood opportunities, there is an explicit mention of several societal groups as potential beneficiaries of targeted interventions, such as women, youth, persons with disabilities, indigenous peoples and local communities, refugees and internally displaced persons and migrants, but no recognition of the needs of older workers. There is also no recognition of the substantial contributions older persons make to the economy through formal and informal work. Overall, some of the drivers of economic exclusion in urban regeneration programmes that put older persons at an increased risk of poverty are not addressed in the Agenda and its provisions do not adequately secure the right of older persons to work and to secure their livelihood.

43. The reference to the right to health of older persons seems limited to the need to prevent non-communicable diseases by promoting walking and cycling (para. 113). Beyond that, older persons would require a general commitment to help them age in place. While the previous framework encouraged the establishment of voluntary programmes to prevent violence against older persons, in the current text an opportunity has been missed to address an important human rights concern for older persons.

44. Nevertheless, overall the New Urban Agenda constitutes a considerable improvement over the previous framework, which also included specific references to older persons but seemed guided by the notion of older persons as a vulnerable group. Although in the New Urban Agenda such simplistic views and stereotypes seem to have been overcome, it remains deficient in some respects. Together with the Sustainable Development Goals, it is not concerned with the full and effective participation of older persons in all spheres of life (i.e. economic, social, civic, political and cultural), nor does it

strive to prevent their social exclusion, which constitutes an important risk for older persons living in urban environments, especially in the context of gentrification.

C. Human rights impact

45. The realization of the right to an adequate standard of living is essential to preventing the social exclusion of older persons. It is generally considered to be indispensable to the fulfilment of all other rights and encompasses all the basic subsistence rights, such as adequate food and nutrition, clothing, housing and the necessary conditions of care when required. The aim is to ensure that everybody is able to live in conditions of dignity, in which they are able to satisfy their needs and interact with others. It has been interpreted to include the provision of health services, income, family and community support and self-help, and as such also relates to decent employment, health, long-term care and independent living in the community.¹⁴ In addition, article 25 of the Universal Declaration of Human Rights requires States to ensure the right to social security in old age.

1. Right to housing

46. Housing is an essential aspect of active ageing and of the ability of older persons to live an autonomous life and prevent them from being socially excluded. Many communities have been experiencing a decline in social housing stock and other housing problems. In the context of gentrification, housing increasingly becomes a marketable asset. That puts pressure on the provision of social and State housing and may even increase the number of persons sleeping in the street or other places unfit for human habitation. According to human rights law, housing is not a commodity, but a basic human right that calls for human rights-based solutions.

47. In general terms, the right to housing can be defined as the right to live somewhere in security, peace and dignity.¹⁵ It includes several aspects, notably legal security of tenure, the availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, housing in a suitable location and housing constructed and sited in a way which is culturally adequate. The Committee on Economic, Social and Cultural Rights in its general comment No. 6 (1995) on the economic, social and cultural rights of older persons states that housing is more than shelter, as it encompasses a psychological and social dimension. It also covers the need for family support. The Committee also acknowledges that national policies should help older persons to continue to live in their own homes as long as possible.

48. In the context of gentrification, older persons may be faced with forced eviction, harassment or other threats to make them leave their place of residence (A/HRC/10/7/Add.2).¹⁶ Privatization and real estate investments may contribute to the unaffordability of land and housing for the urban poor, leading to increased homelessness and regression in the enjoyment of the right to housing.

49. As people grow older, they often feel the need to change their home because it is no longer adapted to their needs (e.g. too large, not barrier-free), but face considerable obstacles, particularly financial, as new rents may be significantly higher. Financial services, such as loans, mortgages or commercial insurance, to enable them to adapt their homes are often not available to older people or are prohibitively expensive because of the inappropriate use of age as a criterion, including for determining risk.

¹⁴ See Committee on Economic Social and Cultural Rights, general comment No. 6 (1995) on the economic, social and cultural rights of older persons; see also United Nations Principles for Older Persons.

¹⁵ See Committee on Economic Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 7.

¹⁶ See also Committee on Economic Social and Cultural Rights, general comment No. 6. and general comment No. 7 (1997) on forced evictions.

50. The Committee on Economic Social and Cultural Rights has identified older persons as a disadvantaged group entitled to priority action in the housing sphere (E/2005/22-E/C.12/2004/9). Excessive rents, inflated housing costs, the unavailability of public housing and the lack of access to basic services can amount to discriminatory practices that require State intervention so that everyone has equal access to housing.¹⁷

2. Right to social protection

51. While many older persons can rely on contributory and non-contributory pensions to cover their basic subsistence needs, the majority of the world's older persons have no choice but to work in order to support themselves and their families.¹⁸ In many developing countries, older persons often have to engage in unpaid informal work owing to the unavailability or inadequacy of pensions. Having access to a secure income in later life, either through work or old-age pensions, is crucial in order to access essential services, such as health care.

52. To prevent poverty and social exclusion in old age, States have a duty to adopt social security measures (see A/HRC/14/31, para. 51). International human rights instruments establish the right of everyone to social security, including social insurance. Beyond ensuring the right to social security, the duty of States to implement social protection systems also flows from the right to an adequate standard of living and a number of related economic and social rights enshrined in several legally binding human rights treaties.¹⁹

53. Many States have privileged the establishment of contributory pension systems, which have left the majority of the older population unprotected. Estimates indicate that less than 20 per cent of older persons are covered by pensions and only about 25 per cent of the labour force is currently contributing or accruing pension rights (see A/HRC/14/31, para. 29). Moreover, contributory systems tend to exacerbate gender inequalities. There is a significant coverage gap of older women and in countries with broader protection in contributory systems, older women are more likely to receive a lower pension due to a lower level of contributions.

54. In its general comment No. 19 (2007) on the right to social security, the Committee on Economic, Social and Cultural Rights explicitly notes that States cannot rely solely on contributory systems for old-age pensions, as all individuals will not always be able to secure sufficient means to maintain an adequate standard of living. Within the limits of available resources, States must provide non-contributory old-age benefits to assist, at the very least, all older persons who, when reaching retirement age, are not entitled to an old-age insurance-based pension.

55. Non-contributory pensions are the only means by which universal pension coverage can be achieved and gender imbalances redressed, although social pensions should not be regarded as the sole response to old-age poverty. In addition to the obligation to establish universal coverage, States should pay attention to vulnerable conditions and adjust means to the true cost of living. That is particularly relevant for older persons, who may be unable to secure adequate resources through work owing to unemployment, old age and disability. In

¹⁷ See Scott Leckie, "The human right to adequate housing", in Asbjørn Eide, Catarina Krause, and Allan Rosas, eds., *Economic, Social, and Cultural Rights: a Textbook*, 2nd ed. (Leiden, Brill Publishers, 1995).

¹⁸ HelpAge International, "Working for life: making decent work and pensions a reality for older people" (2009).

¹⁹ See articles 22 and 25 of the Universal Declaration of Human Rights; articles 9, 10 and 11 of the International Covenant on Economic, Social and Cultural Rights; article 5 (e) (iv) of the International Convention on the Elimination of Racial Discrimination; article 11 of the Convention on the Elimination of All Forms of Discrimination against Women; article 26 of the Convention on the Rights of the Child; and article 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Article 28 of the Convention on the Rights of Persons with Disabilities also mentions the right to social protection.

addition, when faced with gentrification, older persons experience increasing costs and are at greater risk of poverty and exclusion.

56. The distribution of pensions and other cash transfers must not tie older persons to a single locality, as this could lead to further social exclusion, including in the context of gentrification.²⁰ In developing countries, older persons may have to travel for hours to receive their pensions. Ensuring that benefits are distributed at reasonable geographic locations is an integral part of accessibility. Modern alternatives (such as e- and mobile payments) for the distribution of old-age pensions are now deployed in several developing countries, but are not yet the norm. Due consideration has to be given to the accessibility of older persons, bearing in mind challenges relating to information technology literacy rates.

57. There is a need to overcome the burden-discourse and the stereotyping of older persons that also contribute to sociocultural exclusion. Social protection systems may act as economic stabilizers in critical periods and can have positive repercussions on local economies.

3. Right to work

58. Participation in the labour market enhances the self-esteem of older persons, their social inclusion and their financial security. The right of older persons to work includes the right to choose one's employment, the right to work in decent conditions and the right to be protected from unemployment (article 23 of the Universal Declaration of Human Rights). States must abstain from the adoption of measures that interfere with the right of older persons to work. They have an obligation to sustain working opportunities for the older population and should also empower older persons to participate in the economic life of their communities by offering training and opportunities for employment and good working conditions. In addition, they should provide unemployment programmes and adequate means of social protection.

59. Countries with inadequate non-contributory pension coverage, prohibitive age qualification thresholds, low-value pensions and high levels of informal employment are likely to have significant proportions of older persons working.²¹ As the employment of children and young people in developing countries declines, families depend more and more on the work of older persons.²² Owing to inadequate social protection systems, older persons are required to work to supplement their pension income. However, as a result of age discrimination, they have to take up low-paid, low-status informal jobs that are not linked to retirement benefits (A/67/188).²³ These include, for example, working as security for shops, blocks of apartments or factories and as street vendors, domestic workers, builders, etc. Women are even more disadvantaged in terms of formal job opportunities.

60. Mandatory retirement ages and age discrimination in recruitment procedures prevent older persons from finding jobs and continuing working, and may further social exclusion.²⁴ Older persons have a right to decide whether they want to work and what job is suitable for them. They should neither be forced to work nor to retire, but real choice is often impossible owing to barriers in law, lack of employment opportunities, the unavailability of pensions and the absence of support and reasonable adaptations for older workers. Women tend to be more disadvantaged with regard to formal and informal job opportunities because they have had limited access to education, land and other assets throughout their lives. As a result, older persons may end up doing demeaning and physically demanding work in extremely precarious conditions, or are unable to work and end up being deprived of essential goods and services.

²⁰ HelpAge International, *Investing in an Ageing World: Shifting Debates from Costs to Investments* (London, HelpAge International, 2017).

²¹ *Ibid.*, p. 92.

²² See Claudia Martin, Diego Rodríguez-Pinzón and Bethany Brown, *Human Rights of Older People. Universal and Regional Perspectives* (Springer Netherlands, 2015).

²³ See also HelpAge International, "Ageing and the city: making urban spaces work for older people" (2016).

²⁴ See Committee on Economic Social and Cultural Rights, general comment No. 6.

4. Right to health

61. Health is indispensable for the exercise by older persons of many other rights and for them to live a life in dignity. The right to health includes "preventive, curative and rehabilitative health treatment ... maintaining the functionality and autonomy of older persons ... attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity".²⁵ It encompasses a spectrum of care that spans primary to palliative care. Its realization also involves the underlying determinants of health, such as access to water and sanitation, clean air, food and housing.

62. Older persons should be enabled to continue to live in their homes for as long as possible, to avoid both the physical and psychological disruptions involved in moving to an unfamiliar location (see A/64/127, para. 27). Depression, loneliness, anxiety and suicide rates increase in the occurrence of major life changes (A/67/188). Physical and mental health are interdependent and impact on each other. Social exclusion as a result of inaccessible community infrastructure, a lack of feeling of safety, the loss of social networks and other factors associated with urban regeneration, is detrimental to the physical health of older persons. It increases their exposure to risk, the absence of support and inadequate care and may lead to multiple pathologies and a reduction in life expectancy.

63. Urban planning in low- and middle-income countries often prioritizes vehicles and economic activity at the expense of safety and liveability, particularly for the most vulnerable street users.²⁶ In those countries, older persons engage in street-based activities and often have to walk or cycle long distances through congested streets that offer little safety to individuals owing to car-oriented strategies. Urban planners need to take into account the needs of older persons to travel and provide safe and accessible streets and pedestrian zones. In addition, affordable transportation and localized retail and other necessary services can reduce unnecessary journeys for older persons. Gentrification may also induce heavy traffic and increase air pollution, which disproportionately affects the health of older persons.²⁷

64. Policies should promote healthy ageing and tackle the key risk factors associated with urban living, including through awareness-raising, reducing air pollution and encouraging physical activity and affordable healthy food options.²⁸ Urban plans should include comprehensive health strategies to ensure that older persons have access to accessible, affordable, appropriate and good-quality health care, goods and services. In addition to providing services to address chronic conditions and acute illness, States should also develop local programmes to prevent the onset of disease and to offer rehabilitation.

65. State obligations also entail a duty to provide specialized geriatric care, as older persons have different patterns of disease presentation to younger adults and respond to treatments and therapies in different ways. They also frequently have complex social needs that are related to their chronic medical conditions and may contribute to their social exclusion. The provision of care services for older persons tends to be deprioritized because of prejudice and rationing. It is therefore important to integrate the needs of older persons in development plans to ensure that such services are available to the older population.

5. Right to independent living in the community

66. The right to independent living in the community derives from the right to an adequate standard of living and is interdependent with other rights. For example, older persons are unable to exercise their freedom of choice unless they have access to regular and adequate income through work or pensions. The enjoyment of this right does not only depend on personal autonomy and agency, but also on the social aspects of being part of a

²⁵ See Committee on Economic Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health.

²⁶ See HelpAge International, "Ageing and the city: making urban spaces work for older people", p. 9.

²⁷ Ibid.

²⁸ Ibid.

community.²⁹ It is therefore particularly relevant to explore how it may be affected when neighbourhoods and communities change, for instance because of rural to urban migration or gentrification.

67. Older persons have an equal right with others to decide where to live and with whom, and not to be forced into a particular living arrangement. This right includes having the necessary means and support enabling them to make decisions and live their lives in accordance with their wills and preferences.³⁰ Although the right to independent living is referred to in the context of persons with disabilities, international and regional standards enshrine the right of older persons to live in their own home for as long as possible and also to provide for support to age in place. That includes home care and assistance for families of older persons in need of care, which allows for a greater degree of autonomy than institutional care.³¹

68. Consequently, States have a duty not to interfere with the living arrangements of older persons. They need to be provided with individualized support to continue living in the setting of their choice. Furthermore, States should provide assistance to the families of older persons to allow older persons to remain in their homes for as long as they want and also to maintain the family unit.³² Support must not be tied to a specific locality so that older displaced persons are not stripped of it when forced to leave their places of residence. That is particularly important because older persons may lose useful informal networks that provide neighbourhood assistance when they move into another area. In practice, however, home care and personal assistance for older persons are largely inadequate, underdeveloped and underfunded, thus limiting the choice of older persons to age in place.

69. Living independently does not mean living alone or without support. That right mirrors personal autonomy and involves not being deprived of choice and control about personal lifestyle and daily activities.³³ The culture, habits, preferences and needs of the older person shape their decision about where, with whom and how they live their lives, and should be taken into account, as well as the support they require to be able to do so.

70. Independent living also calls for the inclusion and participation of older persons in the community. That includes access to all the services offered to the public without discrimination and to the necessary support services to enable older persons to be fully included and participate in all spheres of social life.³⁴ Those services encompass transport, health care, public spaces and buildings, shopping, volunteering, leisure, events of a political nature, sports, technology and any other activity in which the older person wishes to participate.

71. It also involves real opportunities for engagement with other social groups and for intergenerational activities, in which both older persons and youth participate on an equal basis. Older persons living in cities are at greater risk of feeling lonely and socially isolated.³⁵ Gentrification may further exacerbate social exclusion and segregation unless measures are taken to prevent such negative effects. It may alter the generationally mixed and heterogeneous character of neighbourhoods and may aggravate the marginalization of older persons, as well as cultivating ageist attitudes towards the older generation.

72. Gentrification disrupts lifestyles and networks. Older persons lose meeting points, such as community centres, places of worships, seniors' clubs or even public benches. The closure of institutions that are important to the older population considerably reduces their opportunities for social contact and civic participation. In addition, some activities and services rely heavily on volunteers. There is a need to ensure continuity of such informal

²⁹ See Committee on the Rights of Persons with Disabilities, general comment No. 5 (2017) on the right to independent living.

³⁰ *Ibid.*

³¹ See Committee on Economic Social and Cultural Rights, general comment No. 6.

³² *Ibid.*

³³ See Committee on the Rights of Persons with Disabilities, general comment No. 5.

³⁴ *Ibid.*

³⁵ HelpAge International, "Ageing and the city: making urban spaces work for older people", p. 13.

structures and supplement them as required for the most disadvantaged and isolated older persons.

73. Slum relocation and removal and dweller resettlement break up vital informal networks of disadvantaged persons that have been compensating for structural deficits. Urban strategies must not break those relationships of interdependence, but rather enhance social ties. They also need to include older persons in every step of decision-making to ensure that plans are inclusive and do not lead to marginalization and social isolation.

74. Older persons with dementia are likely to be disproportionately affected by changes in their neighbourhood. Familiar landmarks help people living with dementia to recognize their environment more easily.³⁶ Since urban regeneration considerably alters neighbourhood characteristics, persons with dementia can easily become disoriented, feel unsafe and avoid going out, which compromises their independence and autonomy.

75. The promotion of age-friendly environments is a strategy to ensure that neighbourhoods respond to the needs of older persons and preferences without leading to their isolation or invisibility. Urban planning must be geared towards the equal participation of older persons in society. That includes measures that enhance the safety of older persons (for example adequate lighting and safe pedestrian streets), accessible environments and policies that aim to enhance intergenerational exchange and inclusion in the community. States must take care to maintain social networks and to retain community centres and other structures and institutions that are important to older persons and enable them to meet and engage socially and civically. They can also facilitate the creation of informal networks around older persons that can help fight isolation, but also provide assistance, enhance their feeling of security and improve their quality of life.

76. Gentrification may improve the availability and accessibility of some services, such as the construction of new hospitals. On the other hand, however, it can also render health-related services inaccessible. Day-care centres may be privatized or moved to other parts of the city owing to rising rents. Such situations have a particularly adverse impact on older persons, who are more likely to suffer from chronic conditions and have greater health-care and support needs. The lack of such services infringes the right of older persons to an adequate standard of living, as it puts them at high risk of poverty, health decline and exclusion. Related facilities must be available within safe physical reach and be accessible for older persons.

77. Architectural barriers can seriously affect the daily lives of older persons. They may be unable to leave their houses or to access public buildings, shops and other spaces owing to a lack of elevators or inaccessible pavements. In addition to the physical aspects of accessibility (accessible streets, transport and buildings), States should also take into account affordability and informational accessibility.³⁷ The lack of accessible transport and neighbourhoods can lead to the social exclusion of older persons in both developed and developing countries.

IV. Conclusions and recommendations

78. The social exclusion of older persons is a complex process that involves the lack or denial of resources, rights, goods and services as people age, and the inability to participate in societal relationships and activities, available to the majority of people across the varied and multiple domains of society. It affects both the quality of life of older persons and the equity and cohesion of an ageing society as a whole, with significant implications for the enjoyment by older persons of their human rights.

79. Exclusion from material and financial resources in later life is one of the manifestations of social exclusion, which exacerbates the denial of basic human rights as well as limiting the choices and opportunities of older persons for a tolerable life.

³⁶ Ibid., p. 18.

³⁷ See Committee on Economic Social and Cultural Rights, general comment No. 14.

80. More than half of the world's population currently lives in cities, a number which is expected to rise dramatically in the next decades. Gentrification in the context of rapid urbanization may further contribute to the social exclusion of older persons. When lower-income urban areas undergo significant change owing to an influx of investment and/or more affluent residents, market interests tend to take precedence over the human rights of existing residents. As housing costs increase, older persons move to disadvantaged neighbourhoods on the outskirts of cities, losing their social ties and important reference points. Although gentrification has diverse effects on different people and groups, as services and safety may improve in gentrified areas, older persons tend to experience inequalities and marginalization in the context of urban regeneration and are more likely to experience poverty and other forms of social exclusion, as they are not routinely incorporated into the mainstream of thinking and planning around urban environments.

81. The Independent Expert notes that there is currently no specific universal human rights instrument on the rights of older persons. Specific provisions focusing on older persons, similar to those which exist for some other groups in focus, are therefore not currently available. Against that background, applying rights to older persons in the face of social exclusion can be challenging. The lack of a dedicated legal instrument for older persons may also explain the lack of attention to the specific challenges older persons face in the global policy framework, notably the Sustainable Development Goals, which guide the actions of the United Nations on the ground. It is primordial that the implementation of the Sustainable Development Goals is grounded in the normative framework to ensure the inclusiveness and sustainability of the gains over time.

82. The Independent Expert emphasizes the imperative to adopt a human rights-based approach to ageing. This entails taking active measures against ageism and reconceptualizing the way in which societies view older persons, from passive receivers of care and assistance and an impending burden on welfare systems and economies, to active contributors to society.

83. To foster the social inclusion of older persons, the Independent Expert stresses the need to mainstream their rights in development, in urban policies and in poverty reduction strategies, including by installing processes that allow policies and plans that promote or reinforce discrimination against older persons to be scrupulously scrutinized. It also requires a variety of housing options to be available, such as mixed and designated communities, age-adapted homes and flat-sharing concepts, to ensure that older persons can age in place and fully enjoy their right to adequate housing.

84. Social protection has an important role in preventing exclusion from material and financial resources in old age. Non-contributory systems are the only means to ensure universal coverage and address gender imbalances. The Independent Expert recommends the development of participatory mechanisms of policy design and approaches to development that allow for the active engagement of older persons in decision-making. Such initiatives should move from simple consultative mechanisms to co-research or co-design with or by older persons and take due account of involving diverse groups of older persons, notably those who experience multiple forms of discrimination and are particularly vulnerable to high incidences of poverty and social exclusion, especially older women, persons with disabilities, persons of African descent, individuals belonging to indigenous peoples, persons belonging to national or ethnic, religious and linguistic minorities, rural persons, persons living on the streets and migrants and refugees, among other groups.

85. There is a need to improve the knowledge basis regarding the living conditions, experiences, needs and rights of older persons through dedicated studies, monitoring and evaluation mechanisms, audits, inclusive data collection and non-discriminatory indicators that reflect the realities of older persons and can provide effective evidence for the equitable delivery and monitoring of the implementation of the Sustainable Development Goals, the New Urban Agenda and national policymaking. Investment in research at the intersection of disciplines is also required, in particular sociology, urbanism and human rights, to gain a better understanding of how to promote ageing

in place in an equitable manner, including during rapid urbanization and gentrification.

86. Equitable distribution of resources and services is essential to ensuring that older persons can enjoy their right to an adequate standard of living. That requires active inclusion through the adoption of positive measures to ensure older persons have equal access to housing, work, social security, health care, physical and social infrastructure and other forms of support.

87. The Independent Expert stresses the need to foster partnerships between multisector stakeholders, including local authorities, public health professionals, architects, housing providers, community organizations, universities, the private sector and older persons themselves, to develop innovative and inclusive responses to urban regeneration.

88. The Independent Expert stresses that the lack of a comprehensive and integrated international legal instrument to promote and protect the rights and dignity of older persons has significant practical implications, given that: (a) existing regulations do not cohere, let alone conceptualize regulatory principles to guide public action and the policies of Governments; (b) general human rights standards do not consider the recognition of third-generation specific rights in favour of older persons; (c) it is difficult to clarify the obligations of States with respect to older persons; (d) procedures for monitoring human rights treaties generally ignore older persons; (e) current instruments do not make the issues of ageing visible enough, which precludes the education of the population and with it, the effective integration of older persons.

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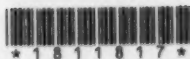
Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Report of the Independent Expert on the enjoyment of all
human rights by older persons on her mission to Georgia****Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Georgia from 12 to 22 March 2018.

In her report, the Independent Expert assesses, to the extent possible, the implementation of international instruments, and national laws and policies, pertaining to the enjoyment of all human rights by older persons in Georgia. On the basis of the information gathered prior to, during and after the visit, the Independent Expert analyses the challenges faced in the realization of all human rights by older persons, paying particular attention to ostracized persons and groups. She also examines the measures taken to foster the implementation of existing law and policies that could contribute to the promotion and protection of the rights of older persons.

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Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Georgia*

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* Circulated in the language of submission only.

I. Introduction

1. The Independent Expert on the enjoyment of all human rights by older persons, pursuant to Human Rights Council resolution 33/5, conducted an official visit to Georgia from 12 to 22 March 2018, at the invitation of the Government. The purpose of the visit was to identify, to the extent possible, best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older person in Georgia. The Independent Expert was not able to assess the situation in the territories of Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia, in the context of her visit. On the basis of the information gathered prior to, during and after the visit, the Independent Expert studied the status of the realization of rights by older persons, and the challenges that they faced.

2. During her visit, the Independent Expert met with representatives of the offices of the President and the Prime Minister, numerous representatives of the Government, local authorities, non-governmental organizations, researchers, academia and civil society, and also with others working on the rights of older persons and older persons themselves in, inter alia, the regions of Gori, Kazreti, Savshebi (a settlement for internally displaced persons) and Tbilisi.

3. The Independent Expert thanks the Government of Georgia for its invitation, and for the cooperation and excellent support that she received throughout her visit. She also thanks the United Nations country team, the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR) and, in particular, the Office of the United Nations High Commissioner for Human Rights (OHCHR), its Special Procedures Branch and its office for South Caucasus in Tbilisi, for their outstanding support in the preparation and execution of the visit.

II. Background and context

4. Georgia is the country with the highest average age in the Southern Caucasus region. According to the 2014 census, Georgia has a population of 3,729,635, and every fifth person is aged 60 or over.¹ The proportion of the older population aged 65 years or over is expected to continue to grow from 14.2 per cent in 2010 to 21.1 per cent in 2030. The share of those aged 80 years and over will increase from 3.2 per cent to 4.2 per cent over the same period.² The Population Division of the Department of Economic and Social Affairs has projected that, by 2050, 32 per cent of people in Georgia will be over 60.³

5. According to the United Nations World Population Ageing report, Georgia ranks thirty-seventh among 201 nations and territories in terms of ageing. It also ranks high (29) on the Global AgeWatch Index 2015.⁴

6. In addition to the slow demographic growth of Georgia, the country has a particularly high rate of emigration. Net emigration rates from Georgia (including in the territories of Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia) between 1990 and 2010 were the third highest among the countries of the world, when more than 1 million inhabitants left the country.⁵

¹ See http://ejshs.net/journals_n/1507124275.pdf.

² Economic Commission for Europe, Road Map for Mainstreaming Ageing: Georgia, United Nations, Geneva, 2015, p. ix.

³ United Nations, Department of Economic and Social Affairs, World Population Ageing 2013, New York, 2013.

⁴ See www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Georgia.

⁵ United Nations Population Fund (UNFPA), Population Situation Analysis (PSA): Georgia 2014, Final Report, Tbilisi, 2015, p. 34.

7. Even though the whole country is demographically aged, there are important differences between the age structures of the regions and between ethnic groups. As a result of important rural-to-urban migration in the peak economically active ages, older persons tend to be left behind in the countryside, where the median age is 40.07 years, compared to 35.19 in urban areas.⁶ The region with the oldest age structure is Racha-Lechkhumi, where persons 60 years of age or older account for 38 per cent of the population and the median age is 49 years. The Guria, Samegrelo and Zemo Svaneti, Imereti and Kakheti regions also have a relatively large percentage of the population over 50 years of age.⁷ With regard to ethnic minorities, one in 10 Kurds is 60 years of age or older (median age of 28 years), and four in 10 Ukrainians are 60 years of age or older (median age of 52.6 years).⁸ Such different age structures might require targeted approaches.

III. Administrative, legal, institutional and policy frameworks

8. Georgia is a post-Soviet country in the South Caucasus, whose development has been affected by civil unrest and armed conflict. The brief armed conflict with the Russian Federation in August 2008 resulted in destruction and displacement, a tense situation after the armed conflict and the recognition of the Georgian regions of Abkhazia and the Tskhinvali region/South Ossetia by the Russian Federation. According to the latest statistics on displacement since the armed conflict, there are 278,103 internally displaced persons in Georgia.⁹ Access to conflict-affected areas remains problematic, while many vulnerable residents are in need of basic services.¹⁰

9. Georgia is a lower-middle-income country, where 25 per cent of the population lives below the poverty threshold of \$2.50 a day. Over the past decade, economic growth has averaged 3.7 per cent annually, although unemployment has been as high as 16.5 per cent. Although the Human Development Index for 2015 was 0.769, the incidence of social exclusion and income disparities remains high, with a Gini coefficient of 0.48 (2011).

10. Georgia has acceded to or ratified several international treaties relevant to older persons. It is party to the main international human rights instruments, including the International Covenant on Civil and Political Rights and the optional protocols thereto; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Rights of Persons with Disabilities. It is also party to the Convention on the Rights of the Child and the first two optional protocols thereto. Georgia is a signatory to the Rome Statute of the International Criminal Court, and

⁶ See Ralph Hakkert, *Population Dynamics in Georgia: An Overview Based on the 2014 General Population Census Data*, UNFPA Office in Georgia, 2017, p. 40; and Bart de Bruijn and Maka Chitanava, *Ageing and Older Persons in Georgia: An Overview Based on the 2014 General Population Census Data*, UNFPA Office in Georgia, 2017, p. 22.

⁷ UNFPA, *Population Situation Analysis (PSA)* (see footnote 5), p. 6.

⁸ See Mzia Shelia, "Population aging in Georgia under conditions of economic crisis", European Population Conference 2006 (available from <http://epc2006.princeton.edu/abstracts/60107>), p. 3. See also de Bruijn and Chitanava, *Ageing and Older Persons in Georgia* (see footnote 6), p. 22.

⁹ In a fact sheet for March 2018, UNHCR provides the following figures as at 31 December 2017: 278,103 internally displaced persons, including persons living in a situation similar to that of internal displacement and returnees in Abkhazia; 540 asylum seekers, 587 stateless persons and 2,091 refugees, including 614 persons in a refugee like situation in Abkhazia. According to national law, people living in a situation similar to that of internal displacement have the status of internally displaced persons. These are persons of concern to UNHCR and the entire system of the United Nations, who continue to need humanitarian support. The UNHCR categorization of persons living in a situation similar to that of internal displacement ("in IDP-like situation") in no way has an impact on their right to return. See also de Bruijn and Chitanava, *Ageing and Older Persons in Georgia* (see footnote 6), p. 23.

¹⁰ United Nations Country Team in Georgia, *United Nations Development Assistance Network 2011 – 2015*.

party to the Convention relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons.

11. Georgia has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. While it has signed the Optional Protocol to the Convention on the Rights of Persons with Disabilities, it has not yet ratified it.

12. Georgia is a party to fundamental International Labour Organization (ILO) conventions, including the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). It is not party to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) or to the Domestic Workers Convention, 2011 (No. 189).

13. The State is yet to ratify a number of other ILO conventions and recommendations relevant to older persons, inter alia, the Paid Educational Leave Convention, 1974 (No. 140), the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), the Paid Educational Leave Convention, 1974 (No. 140), the Rural Workers' Organisations Convention, 1975 (No. 141), the Nursing Personnel Convention, 1977 (No. 149), the Labour Administration Convention, 1978 (No. 150), the Maintenance of Social Security Rights Convention, 1982 (No. 157), the Labour Statistics Convention, 1985 (No. 160), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), the Social Protection Floors Recommendation, 2012 (No. 202), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Labour Statistics Recommendation, 1985 (No. 170), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Nursing Personnel Recommendation, 1977 (No. 157) and the Income Security Recommendation, 1944 (No. 67).

14. At the regional level, Georgia is a member of the Council of Europe and a participating State in the Organization for Security and Cooperation in Europe. It ratified the European Convention on Human Rights on 20 May 1999 and is subject to the jurisdiction of the European Court of Human Rights. In April 2017, Georgia also ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). It has also ratified the European Convention for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment.

15. Georgia has signed an Association Agreement with the European Union in view of gradual harmonization of all sectors with European Union standards.

16. The Constitution is the supreme law of Georgia and recognizes the supremacy of international treaties over national law, unless treaty provisions are in conflict with those of the Constitution. It provides guarantees for human rights protection, non-discrimination and gender equality. At the national level, the Government of Georgia has taken important steps to promote human rights and fundamental freedoms for all. The recent constitutional reform was designed to further strengthen guarantees for freedoms and human rights protection through progressive provisions and more balanced, inclusive and decentralized governance.

17. Georgia has adopted a national strategy for the protection of human rights (2014–2020) and recently renewed its action plan on human rights for 2018–2020, incorporating the recommendations of international organizations, civil society and the Office of the Public Defender (ombudsman).

18. Together with the Economic Commission for Europe, in 2015 Georgia developed a road map to guide the way forward for policymakers, civil society representatives and others working in support of older persons. A national interdisciplinary working group

comprising experts from a range of areas was established to help to draft a road map.² The 2017-2018 national action plan for a State policy on older persons in Georgia was recently adopted to translate the road map into concrete actions, together with a monitoring and evaluation mechanism.

19. The Office of the Public Defender maintains A status accreditation under the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and plays an important role in promoting and protecting the rights of older persons. The Public Defender is in charge of monitoring and protecting human rights and reinforcing the law, and provides feedback on complaints relating to violations of rights and freedoms set forth by the Constitution and national legislation, as well as the international treaties to which the State is a party. Even though it does not have a specific department, some issues of relevance to older persons fall under its responsibility, and the Public Defender includes a chapter on the conditions of the rights of older persons in an annual report on the situation of human rights. The Independent Expert was informed in her meetings that inadequate resources prevent the Office (housed in premises, already in poor condition, that were seriously damaged in a minor earthquake) from effectively discharging its mandate.

20. Although reforms aimed at establishing an enabling environment for an impartial independent judiciary are ongoing, the protection afforded to basic human rights remains fragile, while access to justice and respect for the rule of law require further strengthening (see A/HRC/36/65).

21. While responsibility for older persons in Georgia is shared by several ministries, it mainly lies with the Ministry of Labour, Health and Social Affairs, which is in charge of developing social protection policies and related programmes and laws. Several of its departments are of relevance to older persons, including the Health-Care Department, the Labour and Employment Policy Department, the Social Protection Department, the State Fund for Protection of and Assistance for Victims of Human Trafficking, the National Centre for Disease Control and Public Health, and the Social Services Agency.

22. The Social Services Agency, an independent entity under the Ministry of Labour, Health and Social Affairs, and its territorial offices administer State social and health protection programmes, including pensions, social assistance, health insurance and primary health-care programmes for persons with disabilities. It receives applications for social assistance, takes decisions on the eligibility of applicants, manages data and informs the population about social programmes and the procedures for application. The agency also coordinates admission to homes for older persons, which are administered by the State Fund for Protection of and Assistance for Victims of Trafficking, which also administers shelters for victims of domestic violence. In addition, private organizations registered with the Ministry of Labour, Health and Social Affairs and funded through the social rehabilitation and child-care programme provide services for older persons.

23. In order to thoroughly address the issues of gender equality and women's empowerment, an interagency commission has been established under the auspices of the Office of the Prime Minister. The recently created Interagency Council for the Prevention of Domestic Violence also adopts a multidisciplinary approach in its work. The Department of Human Rights Protection was recently established within the Ministry of Internal Affairs with the aim of ensuring prompt responses to and effective investigations into cases of domestic violence and violence against women, crimes committed on discriminatory grounds, hate crimes, trafficking in human beings and crimes committed by or against minors.

IV. Main findings

A. Discrimination

24. Under the Constitution of Georgia, all persons, including older persons, are equal before the law and may apply to the Constitutional Court to seek judicial review of any

legislation or policy deemed to contravene the provisions of the Constitution. Older persons may also report any violations of the law to the relevant authorities, who will investigate the complaint and, as appropriate, take action to enforce the law. Victims, or persons acting on their behalf, may also lodge a complaint with the police.

25. In 2014, Georgia adopted an anti-discrimination law, article 1 of which clearly prohibits discrimination on the basis of a person's gender identity or sexual orientation, or on the basis of race, colour, language, national, ethnic or social belonging, sex, pregnancy or maternity, marital or health status, disability, age, nationality, origin, place of birth, place of residence, internal displacement, material or social status, religion or belief, political or any other ground.

26. The provisions of the above-mentioned law provide for the elimination of all forms of discrimination, be they direct, indirect or multiple, and for the protection of all persons to ensure their equal enjoyment of rights. According to the law, discrimination must be prohibited in all spheres, both public and private, including labour relations, social security and health care, access to education and learning processes, culture and creative art, science, elections, civil and political activities, justice, State services, use of goods and services, housing, entrepreneurship and banking, and use of natural resources.

27. The Order of the Minister for Labour, Health and Social Affairs on approving minimum service standards for the elderly and persons with disabilities in round-the-clock specialized institutions provides for a non-discriminatory approach to beneficiaries, and includes special protection measures against violence, discrimination and negligence.

28. Within the framework of the State's strategy for the national labour market (2015–2018) and the action plan of the Ministry of Labour, Health and Social Affairs, Georgia has developed a State programme focused on vocational training in demanded professions and internships and on improving the qualifications of job seekers, thereby increasing their likelihood of finding employment. One of the most challenging yet important features of the programme is that there is no age limit for job seekers; it does not, however, provide for any particular support for or focus on the needs of old-age job seekers.

29. Age discrimination in the labour market is frequent. Even people in their late forties are often stereotyped as lacking dynamism, efficiency and skills. As there are no unemployment benefits, older workers who become unemployed are left without any income.

B. Violence, maltreatment and abuse

30. Gender-based violence seems to be socially tolerated in Georgia owing to the persistence of entrenched patriarchal attitudes and gender stereotypes (A/HRC/32/42/Add.3, para. 9). According to a recent report prepared by the Office of the Public Defender on the situation of human rights and freedoms in Georgia, common forms of violence include neglect and physical and psychological abuse, which also involves humiliation and denial of contact with other people, and other forms of financial abuse.¹¹

31. Acts of violence by family members against older persons seem to be frequent in Georgia; and it is reasonable to assume that much abuse goes unreported, given the enormous importance attributed to the institution of the family. Many have the cultural expectation that older persons will be cared for by the multigenerational family and indeed, a significant part of care is provided within the family. The lack of detailed information about mistreatment and abuse of and violence against older persons made it impossible for the mandate holder to identify their causes, thus impeding the development of adequate prevention measures.¹²

¹¹ See Public Defender of Georgia, "Presentation of femicide monitoring results", 18 June 2018.

¹² See United Nations Joint Programme for Gender Equality, Special Report: Evaluation of Protection Mechanisms from Domestic Violence, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 2017.

32. The 2008 law on the elimination of domestic violence, and protection of and support for victims of it refers also to older persons, who may be particularly vulnerable to acts of abuse. The law assigns the State, through its authorized bodies, the responsibility to support and ensure introduction and application of mechanisms for the prevention of domestic violence, such as the analysis and the study of risk factors of domestic violence, legal methods, the keeping of statistics, information-education campaigns and the organization and delivery of special education courses. To detect and eliminate domestic violence, protective or restrictive orders may be issued as part of criminal and civil law procedures. The law sets out the responsibilities of the police and law enforcement authorities, provides for the possibility of shelter, and calls for the establishment of rehabilitation centres for perpetrators of abuse.

33. The Government has also adopted a number of strategies and policies with the specific objective of achieving gender equality through the empowerment of women and by combating domestic violence.

34. In order to strengthen policies aimed at the elimination of gender discrimination, violence against women and girls and domestic violence, in 2017 Georgia ratified the Istanbul Convention and introduced relevant amendments to national law and legislative acts. In this connection, the State is currently conducting an awareness-raising campaign for the prevention of domestic violence and violence against women.

35. While older persons are protected by law from neglect, maltreatment, abuse and violence, there seems to be no dedicated programme to prevent and address abuses against older persons. Even though the report prepared by the Office of the Public Defender refers to five State-funded shelters victims of domestic violence and three crisis centres for victims of domestic violence and violence against women that are currently available,¹³ there are no temporary shelters catering for the specific needs of older victims of violence, maltreatment or abuse.

C. Adequate standard of living and autonomy

36. The Government's redistributive policies have played a significant role in reducing poverty in Georgia. Between 2006 and 2012, the percentage of the population living in extreme poverty fell from 5.4 per cent to 3.7 per cent. Despite comprehensive reforms, many older persons remain affected by severe poverty. Economic growth and other progress made in improving people's living standards should extend to more people if poverty is to effectively addressed.

37. In 2015, Georgia was ranked 70 out of 188 countries and territories — namely, in the high human development category — in the Human Development Index. When inequality is taken into account, however, it reveals significant disparities.¹⁴

38. Poverty rates are higher in rural areas and in the east of the country, in particular in Mtskheta-Mtianeti and Shida Kartli, in households with dependents and households headed by women, and among internally displaced people and households with no working members. The rural development strategy for 2017–2020 identified the ageing rural population as one of the key challenges in rural areas. The highlands of Georgia are characterized by, inter alia, extreme poverty, poor infrastructure and poor access to health care.¹⁵ Since September 2016, persons living permanently in high mountainous regions have received a 20 per cent increase in State pension and social benefits.

39. Applications submitted to the Public Defender in 2017 confirm that many older persons live in grave social and economic conditions. The majority of them face the threat

¹³ See Public Defender of Georgia, "Presentation of femicide monitoring results" (see footnote 11).

¹⁴ See UNDP, "Human Development for Everyone", Briefing note for countries on the 2016 Human Development Report, Georgia.

¹⁵ Rural Development Strategy of Georgia (2017–2020), available from <http://enpard.ge/en/wp-content/uploads/2015/05/Rural-Development-Strategy-of-Georgia-2017-2020.pdf>.

of poverty, homelessness and isolation. A large number of older persons have no access to social services or adequate living conditions.

40. The contributions made by the national social security system accounts for a large part of the resources of older persons, and help to ensure the financial security of a large proportion of the older population. Nevertheless, many older persons are among the persistent poor.

41. Between 2012 and 2014, the Government significantly expanded social spending, leading to growth of 60 per cent in real terms, led by pensions, health and other direct transfers benefiting older persons, with an important impact on poverty reduction. In 2013 and 2014, the new Government prioritized social expenditure over other objectives and raised social benefits. Since then, public spending on health care, education and pensions has increased.

42. According to the midterm action plan for 2016–2019, the elimination of the worst forms of poverty in the country remains a challenge to the attainment of a decent standard of living for the elderly. The social protection and retirement benefit programme therefore aims at developing an efficient and financially sustainable pension, social welfare system and social services and monetary benefits for vulnerable groups. At present, the retirement package for old-age pensioners (women from the age of 60 and men from the age of 65) and State compensation are distributed within the framework of the programme, an amount roughly equivalent to the current minimum wage.

43. Although housing is an essential element of active ageing and of the ability of older persons to live an autonomous life, it is currently lacking for many of the most vulnerable. The State should have a coherent and sustainable housing policy, and be active in providing social and affordable housing to older persons.¹⁶

44. The phenomenon of persons — including older persons — living in the street has recently received greater attention from State authorities; quantifying the exact needs of those affected is however difficult, given that statistical information is not disaggregated by age group. In the early 1990s, housing in Georgia was privatized, usually at a nominal, symbolic price. Many households sold or lost their properties in the years characterized by civil unrest and economic hardship, leaving a number of today's older persons without their own place to live. Some of them live with relatives, while others in residential care homes, even though they may not actually be in need of care.

45. The privatization of housing at nominal value led to a number of people becoming home owners, even though they were unable to bear the maintenance and renovation costs involved. As commercial banks do not provide housing loans to pensioners, many older persons have no way of investing in the improvement of their own living conditions.¹⁷ Apartment buildings are often in poor condition, particularly the areas used jointly by all tenants, such as elevators.¹⁸ According to information received by the mandate holder from the Public Defender, the situation and unsuitable living conditions of older persons and persons with disabilities in the so-called “cardboard house” in Batumi remain a concern.

46. Despite the Government's efforts to provide housing to persons living in settlements, access to water, sanitation and health services is limited. The living conditions of displaced women, in particular older women (who account for 60 per cent of the displaced), place them in a vulnerable and marginalized position. Generally, older internally displaced women live in poor economic conditions, and are concerned about the cost of medicines and the small pensions they receive (A/HRC/32/42/Add.3, para. 41). As younger family members are often displaced at an earlier stage, many older persons end up alone in separate collective centres.

¹⁶ See Vladimer Vardosanidze and Elena Dajania, *Social Housing – Georgian Reality in International Context*, Swiss Agency for Development and Cooperation, August 2013; and de Bruijn and Chitanava, *Ageing and Older Persons in Georgia* (see footnote 6), p. 36.

¹⁷ Economic Commission for Europe, *Road Map* (see footnote 2), p. 30.

¹⁸ De Bruijn and Chitanava, *Ageing and Older Persons in Georgia* (see footnote 6), p. 36.

47. Larger cities, such as Tbilisi, Batumi and Rustavi, have quite a well-developed transport network. In 2012, 40 buses of the Tbilisi Transport Company were adapted for persons with disabilities, and in metro stations, steps were specially marked to make them visible for the visually impaired. Outside the main cities, transport is provided mostly by *marshrutka* (private minibuses), which are not necessarily suited to persons with limited mobility, and in some regions there is no public transport at all. While older persons benefit from preferential rates, the lack of regulation of *marshrutkas* affects the quality of their service, and there seem to be instances of discriminatory behaviour by drivers towards them.¹⁹

48. Although Georgia ratified the Convention on the Rights of Persons with Disabilities in 2014 and the Government adopted a plan of action to ensure equal opportunities for persons with disabilities for 2014–2016, and relevant regulations with regard to spatial arrangements and architectural and planning elements for persons with disabilities, the accessibility of public buildings in Georgia remains limited. Most public buildings are not adapted to cater for the needs of older persons, in particular those with limited mobility or with disabilities. Barriers in the physical environment of health-care institutions, public spaces and buildings should therefore be removed, and adaptations made accordingly, including in the transport system. Relevant standards should also be developed.²⁰

49. On 20 March 2015, the Parliament of Georgia adopted a legislative package to reform the legal capacity system, which restricted all rights of a person, to move to a system of legal guardianship under which the needs of the person are identified by individual assessment. As a result, the Government also approved a number of bylaws. An analysis of the trend in implementation of legislative changes showed, however, that in practice no effective changes had actually been made. In addition to certain legislative gaps, an analysis of court practices by the Public Defender revealed, inter alia, the complete deprivation of legal capacity and plenary guardianship, even though the legal amendments reconfirmed by the Government prohibit them.

50. Climate change and its adverse impact on ecosystems and the economy are a serious threat for Georgia in the context of sustainable development. Extreme climate events, such as floods, have increased significantly, while droughts are becoming increasingly frequent in western Georgia.²¹

51. The effects of climate change generally have a disproportionate effect on older persons owing to their reduced mobility, dependence and physical, emotional and mental conditions. These factors are often aggravated by poverty and location. Moreover, older persons tend to be excluded, isolated and left behind in natural disasters and emergencies.

52. Floods have become one of the biggest risks in Georgia, often causing harm to residential areas and agricultural land in its different regions. The consequences particularly affect older persons: 84 per cent of people aged 65 years or older are in fact self-employed and work as subsistence farmers.

53. Older internally displaced persons may find it particularly challenging to rebuild their lives as they tend to be more emotionally attached to their town, their neighbourhood and their home. The erosion of family support caused by displacement and the fact that many older persons remain firmly anchored in the pre-displacement reality can have a significant impact on their psychosocial well-being.

54. The State strategy for internally displaced persons aims to create conditions for the dignified and safe return of such persons and to support those who have spontaneously returned to their places of permanent residence. It also aims to support decent living conditions for displaced populations and their integration into all aspects of society. In addition to the monthly basic pension, internally displaced persons, whether living in a collective centre or in private accommodation, receive a monthly allowance. In 2014, the

¹⁹ Economic Commission for Europe, Road Map (see footnote 2), p. 28.

²⁰ Public Defender of Georgia, Report on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017.

²¹ See Rural Development Strategy of Georgia (see footnote 15).

Government increased the monthly allowance to 45 lari, and decided that those persons with a taxable income of at least 1,250 lari per person per month would no longer be eligible for the monthly allowance.

D. Social protection and right to social security

55. The social security system in Georgia significantly contributes to the alleviation of old-age poverty. It comprises social assistance schemes, an old-age scheme, social services, a social safety net and social compensation schemes. Targeted social assistance is one of the main components of the system available to the most disadvantaged groups. In 2006, a proxy means-test system based on a wider range of variables, such as income, family size or special needs, was introduced, to better target social protection. Nonetheless, the most vulnerable segments of the population, such as older persons, are not necessarily the first to receive social assistance.

56. The State promotes the development and delivery of a wide range of social services, including residential, alternative and community- and family-based services. The services target, *inter alia*, older persons and persons with disabilities. Services include rehabilitation assistance for persons with disabilities, day-care centres and community-based services.

57. The State has a universal, non-contributory old-age pension scheme that plays an important role in the reduction of poverty, providing a basic level of protection for many older persons. The scheme is flat-rate, unconditional and universal in nature, payable to any person who reaches retirement age (60 years for women, 65 years for men), unless the person receives a pension from another country, in the case of dual citizenship, or the person works in the government sector. It also provides men over the age of 65 and women over 60 with a modest replacement rate that is a percentage of their average wage (about 18 per cent). Cash benefits are provided for persons with disabilities, and also in the event of the loss of a household breadwinner.

58. Even though the old-age pension has been gradually raised, it remains too low to assure an adequate standard of living; the persistent poor in fact includes many older persons. The Independent Expert notes that the current pension has a low replacement level and actually also has, together with the old-age pension, a poverty alleviation function around the minimum subsistence level. Non-contributory pensions can, however, play a key role in ensuring that women have access to at least a basic pension, even if the benefit received is insufficient to meet their needs.

59. Under the current pension system, all pensioners receive the same amount, irrespective of contributory years or the average salary. The system is not means tested, as recommended by ILO, and may incentivize informal work. There are also concerns about its long-term sustainability, given the demographic dynamics in Georgia.

60. Given that the current pension system fails to address the challenges the country is facing, a reform process has been undertaken. A draft law submitted to the Parliament by the Government on 29 December 2017 envisages the introduction of an accumulative pension system based on a defined contribution plan, namely, a semi-mandatory pension savings scheme that would be based on personal accounts. This will constitute another pillar of the pension system and will be mandatory for employees under 40 years of age once the law comes into force. As a transitional measure, persons aged 40 years or older may opt out of the system during the first five months after automatic enrolment — which could compound the situation old-age poverty, since those who opt out of the new system could be left without an adequate pension in the future. The Independent Expert is also concerned that the reform does not include key elements of solidarity, intrinsic to the mandatory pay-as-you-go schemes found in many European countries, given that periods of illness, unemployment, care or parental leave will be non-contributory. Also, the proposed system might not effectively address the risk of old-age poverty, particularly among women.

61. The social protection system is fragmented, and further undermined by a shortfall in the institutional capacity necessary to deliver quality services, or the analytical capacity

needed to measure and assess policy impact on the livelihood of the most vulnerable groups, including older persons.

62. In Georgia, there is no age-friendly policy framework, which would encourage the retention of older workers or provide incentives to hire them. There are also no age-friendly workplaces or working arrangements.

E. Education, training and lifelong learning

63. Education in old age is important for personal growth, paid or non-paid work, active citizenship, local development and consolidating intergenerational relationships. Georgia does not have an established system of continuing education to allow workers to improve their skills or to acquire new ones. Older persons in Georgia can register for and attend university courses provided that they pass the entrance exam.

64. While a new education strategy has been prepared, it continues to focus on qualifying younger persons for a profession, without taking adequately into account the fact that older workers in many professions require ongoing training to upgrade their skills.

F. Care

65. The health-care system in Georgia has undergone a transformation since the State declared its independence. In 2007, the Government introduced a medical insurance programme for the poorest 20 per cent of the population; in 2013, it established a State-funded universal health programme, which provides a basic package of primary health-care services, covering also emergency medical care in outpatient and inpatient settings. It does not, however, cover chronic illnesses or recurrent expenditure for outpatient drugs for persons who were previously uninsured.²²

66. According to the World Bank, persons 65 years of age or older are particularly vulnerable to catastrophic out-of-pocket payments exceeding 10 per cent of total consumption.²³ Despite the risks involved, older persons apparently prefer to self-medicate and avoid such costs — a situation that also explains the underutilization of outpatient care services in Georgia. Adequate coverage should be ensured, particularly in the case of persons suffering from chronic diseases, which are frequent among the older population. In the light of the excessive focus on curative medicine that persists in the country, prevention is another area that should be developed further.

67. The national Parliament recently adopted a new strategy for developing the health-care system in Georgia by 2020, which recognizes many of the existing challenges. It builds on the previous national health-care strategy for 2011–2015, which, *inter alia*, identified the need to address disparities between urban and rural access to facilities. A strategy on mental health (including Alzheimer's disease) was also recently adopted.

68. Georgia does not have a comprehensive strategy on long-term care. While some elements of such care are available, others will need to be strengthened. Long-term care can be both medical and non-medical; it comprises a large spectrum of care services, which include primary, secondary and tertiary care, public health services and emergency services. An overall strategic vision of long-term care is now required as a matter of urgency to provide overall direction for the further development of such services in a comprehensive manner.

²² The Government explained in a submission to the mandate holder that, as from 1 July 2017, persons suffering from chronic conditions, who are registered in the targeted social assistance (TSA) scheme with a score not exceeding 100,000 are eligible for the State programme that provides drugs for chronic conditions (23 types of medicines). The programme envisages providing patients with selected drugs for chronic cardiovascular diseases, lung diseases, diabetes (type 2) and thyroid conditions.

²³ Georgia and the World Bank Group, "Promoting Prosperity for the People", 2017 (<http://pubdocs.worldbank.org/en/393661505116118995/ECCSC-Georgia-for-web-0904.pdf>).

69. In Georgia, palliative care, including outpatient and inpatient care, is available to persons who are terminally ill, under State programme. No co-payment is required for outpatient palliative care, although patients are required to cover 30 per cent of expenses for inpatient care, a cost that has a disproportionate impact on older persons.

70. The family has by tradition always played a vital role in Georgian society, and indeed continues to provide a significant amount of care for older persons. As a result of growing urbanization and the decision of many adult children to emigrate in the hope of finding better living conditions and more employment opportunities, however, older parents are often left isolated in rural or remote areas. The progressive erosion of the traditional multigenerational family setting has left an increasing number of older persons in Georgia, who often eschew institutional assistance, without a family and therefore effectively without care. As intergenerational relations change, there is a growing need for alternative solutions and forms of support, even institutional ones, to care for older persons.

71. While reliance on the family has been able assure broad coverage of care, informal caregivers today are often not adequately trained or prepared for the tasks that they need to perform. Many require practical training, taking into account the specific needs of dependent older persons, particularly those with Alzheimer's disease or afflicted by another form of dementia. Moreover, acts of violence, maltreatment, neglect and abuse sometimes go undetected within the family setting, as older persons may be reluctant to report such cases out of family loyalty, or fear of reprisal or stigma.

72. In Georgia, the care policy for older persons focuses on the delivery of services by community organizations in residential homes within the framework of the State social rehabilitation programme.

73. Georgia currently has two public homes for older persons, one in Tbilisi and the other in Kutaisi, each with an approximate capacity of 100 places. The homes operate under the State Fund for Protection of and Assistance for Victims of Human Trafficking, a legal entity of public law under the control of the Ministry of Labour, Health and Social Affairs. The fund was created in 2006 on the basis of the national law on combating trafficking in persons to, inter alia, ensure decent living conditions for older persons. The home in Batumi is managed by the municipality, in collaboration with church authorities.

74. There are also several private institutions providing residential care to older persons that are funded by the State. Any entity registered with the Ministry of Labour, Health and Social Affairs may, in accordance with the rules provided by the law, act as a private service provider.

75. Internal legislative regulations and minimum standards regulate residential homes in Georgia. Monitoring of compliance of specialized institutions for older persons with the minimal standards or mechanisms overseeing enforcement of the standards is, however, inadequate; violations of the rights of older persons in such settings therefore are not sufficiently addressed. The degree of awareness of legal regulations with regard to violence and the standards of service required of providers seems extremely low, and older persons are generally not aware or informed of their rights.

76. The Kutaisi home for older persons offers good practices in several aspects; for instance, it maintains a registry on incidents, a registry on any acts of violence committed and a written account of measures taken in response to complaints. It also has a special feedback registry.

77. Besides insufficient capacity, quality of care remains an area of concern in all settings. In some old-age homes, the degree of care and living conditions for older persons are not adequate, and not suited to the individual needs of older persons. There are reports that older persons have been victims of at least some form of maltreatment. Generally, cases of violence often stay undetected or are underreported out of fear of reprisal or owing to the victims' lack of knowledge or awareness of their own rights. Scarce financing and lack of monitoring should be addressed more actively.

78. While Georgia has a very large number of doctors per capita, the number of nurses is in continual decline, leading to a ratio of nurses to doctors that is the lowest in Europe. In order to attract sufficient people into the care sector, better training opportunities, including

academic qualifications, should be provided, which will also help to portray care work as a profession with good career prospects. Only if the number of professional meet the actual needs will care providers be able to address the emotional and physical needs of older persons with compassion and dignity.

79. The State programme for social rehabilitation and childcare benefits persons with disabilities and older persons by supporting their integration into society.

80. While the home-based care currently available is insufficient to meet actual needs, there is also an insufficient number of day-care centres. The 28 public day-care centres operative at the time of writing provide home-based care to no more 60 older persons, and are therefore insufficient to cater to the needs of a significantly higher number of people. Municipalities should be equipped financially and technically, with expertise as well as with human resources, to be able to ensure that these services are available to older persons and their families. This would also help to overcome existing patriarchal structures and enable women to choose to join the workforce or to build a family as essential contributions to both economic and demographic growth.

81. Some municipalities, such as Tbilisi, engage non-profit organizations to provide home care for a fee. The Batumi municipality launched a home-based care project in 2014, providing services to 40 older persons twice a week.

82. Non-profit organizations, such as Caritas and the Red Cross, provide the largest share of home-care services in Georgia, with a focus on those living below the poverty line (as certified by the Social Services Agency). They also provide training for informal carers, nurses and medical students. Furthermore, the Home Care Coalition, an umbrella organization for seven smaller organizations engaged in home care, provides day-care services, housing, nursing homes, hospices and palliative care, and also assists in the retraining of nurses.

83. In addition, Georgia has a number of institutions for persons with disabilities, including older persons with disabilities. The Public Defender has expressed concern at systematic and individual violations of the rights of persons with disabilities, including the use of physical restraints and lack of contact of persons with disabilities with their families. The Independent Expert was also informed about a lack of qualified personnel and the limited psychosocial rehabilitation services available, while quality management and abuse prevention mechanisms are inadequate.

84. The social service system in Georgia remains weak. Social workers are overburdened, poorly paid and lack the means and conditions to work effectively. Standards of social work are missing, as is training of social workers (A/HRC/34/55/Add.1, para. 60).

85. Older persons have different patterns of disease presentation than younger adults. They respond to treatment and therapies in different ways and frequently have complex social needs relating to their chronic medical conditions. Unfortunately, the State has lost its leading role in the field of gerontological research; there is currently no gerontology or geriatric faculty at university, and only some classes are offered as part of the general programme. Furthermore, no geriatric beds or professionals seem to be currently available in hospitals.

V. Conclusions and recommendations

A. Conclusions

86. The Independent Expert welcomes the adoption of the national action plan for a State policy on older persons in Georgia on 17 November 2017, a long-awaited step towards the transformation of policy into concrete actions for older persons. She regrets, however, that the action plan has not yet been translated, which makes it difficult to assess the extent to which the road map developed by the Economic Commission for Europe in collaboration with the Government has been embraced.

She nonetheless hopes that the action plan will help to mainstream the rights of older persons into national policies and all government planning.

87. The Independent Expert notes the importance of the national interdisciplinary working group as a follow-up mechanism. She recommends that the existing institutional infrastructure be elevated to an interministerial coordination body, on a meta-level, with lead competence on aging issues, to ensure a multidisciplinary and comprehensive approach to ageing. It is essential that the independence of such an interministerial coordination mechanism be ensured in mainstreaming a human rights-based approach into all activities, which would also greatly facilitate the implementation of the national action plan and ensure a holistic approach.

88. The Independent Expert is encouraged by the State's recognition of the importance of population dynamics for sustainable development. She notes, however, that the United Nations Partnership for Sustainable Development, while identifying key focus areas of particular relevance to the enjoyment by older persons of their human rights, such as social protection and health, does not include older persons as such among them. The Independent Expert calls upon the Government of Georgia to ensure the integration of ageing, in a rights-based manner, when formulating its next framework document. She also stresses the importance of creating conditions and possibilities for cooperation between and within generations to maintain and foster intergenerational solidarity.

89. The Independent Expert recommends that the mandate of the Office of the Public Defender be expanded to specifically include older persons, and that the Office be empowered to issue binding opinions and to request initiation of legal proceedings, or to set up a separate independent monitoring body and extend such powers to it.

90. The Independent Expert recommends that Georgia ratify the optional protocols to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of Persons with Disabilities.

91. On the basis of the findings and observations in the present report, the Independent Expert makes the conclusions and recommendations below.

B. Recommendations for the Government

1. Study and statistics

92. The Independent Expert encourages the Government of Georgia to ensure nationwide, systematic and regular collection of disaggregated data on impediments to the enjoyment of all human rights by older persons, such as any forms of discrimination based on age as sole or accumulated criterion, on exclusion, poverty and on all forms of violence, abuse and maltreatment. Given that data have to be used sensibly to avoid stigmatization and potential misuse, particular care should be exercised when collecting and analysing data to respect and enforce data protection, informational self-determination and privacy.

93. The Independent Expert recommends that Georgia build on its past leading role in the field of geriatric and gerontological research to encourage the study of social and economic problems of population aging and the enjoyment by older persons of their rights.

2. Discrimination

94. While acknowledging the Government's efforts to raise awareness of equality and to change people's attitudes and beliefs to eliminate prejudice against older persons, the Independent Expert emphasizes the need for a strategy that addresses discrimination and ageism in a coherent and multifaceted way.

95. The Independent Expert also notes the persistence of patriarchal attitudes and deep-rooted stereotypes with regard to the roles and responsibilities of women and men within the family and in society at large. Such stereotypes are not only a root

cause of violence against women in the private and public spheres but also place women in a disadvantaged position, including in the labour market.

96. The Independent Expert recommends that the Government play a more active role in disseminating information about demographic challenges and to ensure that older persons are not represented only as being needy and vulnerable, thus effectively fighting existing ageist attitudes. A far-ranging awareness-raising campaign should be conducted to challenge existing stereotypes and misconceptions about older persons and to provide alternative views in order to change social perceptions of older persons.

97. The Independent Expert stresses the need to prohibit discrimination based on age alone in the hiring, retention, promotion and training of employees. Such an effort should be accompanied by awareness-raising about the important contribution that older persons can make as an active part of society and for employers to understand the benefits of an age-diverse workforce.

3. Violence, maltreatment and abuse

98. Reports suggest that violence against and abuse of older persons are frequently committed, including by family members. In the light of the general underreporting of cases of violence, maltreatment and abuse involving older persons, the Independent Expert emphasizes that the dissemination of information to older persons about their rights could help to counter this trend.

99. The Independent Expert stresses that laws are not enough and that further measures and mechanisms are required to detect, report on and prevent all forms of abuse of older persons in institutional care and in family settings. Protocols and processes are needed to help individuals, families, caregivers in institutional settings and community groups to understand the issues surrounding elder abuse, to recognize individuals who are at risk and to respond when appropriate. Caregivers in domestic and institutional settings should be further sensitized and trained on preventing and detecting elder abuse. The Independent Expert also stresses the need for safeguards against the financial exploitation of older persons. She welcomes the Government's expressed intention to deliver a series of training programmes in 2018 for personnel of the State Fund for Protection of and Assistance for Victims of Human Trafficking on preventing and detecting elder abuse.

100. The Independent Expert also encourages Georgia to conduct a preventive information campaign on violence against and maltreatment and abuse of older persons, offering the availability of caseworkers, who can refer older victims to professional help, including legal, medical and psychological help, and shelters.

101. Training programmes for members of law enforcement, the police, regulatory authorities, judges, lawyers and prosecutors are essential to ensure that investigations into cases of domestic violence convey the message to the community that violence and abuse against older persons are serious crimes and will be treated as such.

102. Social service providers should also be trained specifically to recognize and resolve abusive situations within families. Law enforcement should be trained to work with older persons who become victims of abuse. Given that older persons may fear to approach the police, alternative services, such as case workers, should be available to support older persons throughout the process by, for example, accompanying them to the police or helping them to find a shelter. Shelters should be designed to cater for the needs of older persons, in particular those who require a high level of medical care and assistance.

4. Adequate standard of living and autonomy

103. The Independent Expert urges the Government to ensure that aging is included in discussions on poverty, as it will play an increasingly important role to shape social assistance policies in the future.

104. The Independent Expert encourages the Government to take further steps to improve the accessibility of public buildings in Georgia, including by means of

adaptation measures for older persons with reduced mobility or with disabilities. Further measures should also be taken to make public transport, especially in rural areas, accessible for older persons, particularly in areas where *marshrutkas* are currently the only means of transportation.

105. Engineers and architects should be aware of the implications of their profession on the enjoyment of all human rights by older persons. The Independent Expert recommends fostering the application of a human rights-based approach to secure the involvement of architects and engineers in the design of public and private buildings, in conformity with human rights.

106. The Independent Expert notes that there is a need to conduct a vulnerability assessment of older persons affected by climate change in different areas of the country. Steps should be taken to foster the resilience of older persons, to reduce their vulnerability and to ensure that they are fully informed and participate actively in the formulation and implementation of policies and decisions that directly affect them. Their experience, knowledge and skills should be part of all phases of any disaster risk reduction strategy, from mapping exercises to implementing solutions at the local level; in this way, local communities will be empowered to develop practical and realistic approaches to the environmental challenges that they face. In emergency situations, humanitarian responses, services, support and information should be suited to the specific needs and conditions of older persons. Adaptation measures require national legal frameworks to protect the rights of older persons who are affected, drawing upon existing standards, guidelines and best practices, such as the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, the Peninsula Principles on Climate Displacement within States and the Guiding Principles on Internal Displacement.

107. The Independent Expert recommends that the Government of Georgia conduct an in-depth assessment of the needs of older internally displaced persons in order to better target specific policies and programmes.

108. The Independent Expert recommends that the legislation on legal guardianship be further amended to be brought fully into line with the Convention on the Rights of Persons with Disabilities. It is essential to raise awareness within the judiciary and to ensure that judges and lawyers are adequately trained to ensure that the rights of older persons with disabilities are fully respected.

5. Social protection and the rights to social security

109. While welcoming the State's recognition that the current pension is insufficient, the Independent Expert calls upon the Government of Georgia to ensure that the reform effectively addresses the risks of old-age poverty, particularly among women, and that it contributes to fostering intergenerational solidarity. She notes that, if necessary, due consideration should be given to alternative options.

110. The Independent Expert calls upon the Government to address persistent poverty among older persons. She emphasizes the need to ensure that the existing system of proxy means-testing better targets the most vulnerable, in particular older persons. Older persons as a group should be taken into account in the development and refinement of social protection policies and measures so that major vulnerabilities can be addressed proactively and efficiently.

6. Education, training and lifelong learning

111. The Independent Expert notes that there is a need for a holistic approach to education and training that takes duly into account the needs of older persons and the benefits for them of continuous learning and vocational and educational training. She recommends that the Government further its analysis of labour market needs in order to align education and vocational training with those requirements.

112. The Independent Expert emphasizes the importance of enabling and incentivizing older persons to remain in the workforce in accordance with their

capacities and preferences. Qualification, retraining and further training and development efforts, including vocational education and training, should be available to all, including older persons.

113. Lifelong learning is essential also for older persons who are no longer part of the workforce, as it enables them to address constantly changing circumstances, requirements and challenges, to participate actively in society and to continue to lead an independent life. The Independent Expert stresses that more efforts are needed to implement a strategy of lifelong learning that adequately responds to the needs of persons as they grow older.

7. Care

114. The Independent Expert calls upon the Government to develop an overall strategic vision of long-term care as a matter of urgency, which should provide overall direction for further development of such services in a comprehensive manner. Further efforts are needed to move from a curative focus to a system that promotes prevention and screening.

115. Municipalities should be allocated the financial resources necessary to ensure that sufficient day-care services are available to meet the needs of older persons and their families. This would also free the capacities of informal carers and allow them to join the workforce or to build a family as essential contributions to both economic and demographic growth.

116. Quality management in residential care, abuse prevention and case management system should be strengthened. The Independent Expert stresses the need to ensure quality control in all settings, including through the establishment of monitoring mechanisms to ensure adequate care of older persons and to be able to effectively address violations of their rights. She also notes that regular contacts with family members are an important element of external control of the well-being of older persons in all residential settings.

117. There is a growing need for support to care for older persons as intergenerational relations change; the Independent Expert therefore calls upon the Government to step up its efforts in this regard. Existing homes for older persons are insufficient; alternatives to institutionalization should be further explored, such as formalizing home care for older persons who need permanent care or assistance, home nursing and social home-help services, housing schemes for persons with special needs, day-care centres, and mobile care. At the same time, more awareness-raising activities should be undertaken for older persons and family member to illustrate the benefits of institutional care. The Independent Expert also notes the importance of consulting and taking into account the views of all age groups when devising policies for older persons, thereby maintaining intergenerational solidarity.

118. The Independent Expert stresses the need to address the serious challenges posed by the lack of availability of qualified nursing staff. The nursing and care professions should be made more attractive, with higher salaries and more career opportunities. She emphasizes the correlation between working conditions of care workers and the quality of care for older persons. The Independent Expert also recommends the introduction of the profession of social worker, and that adequate training be provided to ensure that older persons are able to fully enjoy their human rights.

119. Given the growing number of older patients, the basics of gerontology and geriatrics, and how to interact with older patients, should become part of all medical professional training and pursue a biopsychosocial instead of a mere biomedical approach. The Independent Expert recommends that geriatric medicine be integrated into university curricula to ensure that sufficient qualified specialists in geriatrics are available to meet the needs of an ageing society. Training in gerontology and geriatrics should also be a requirement in the training of health professionals already in the workforce, and should also be given to the different categories of health personnel and community members. Moreover, geriatric wards should be established in all hospitals

to ensure the delivery of comprehensive, compassionate care that recognizes the special needs of older persons with a view to optimizing their quality of life and functional ability.

C. Recommendation for the international community

120. The international community has an important role to play in supporting the Government of Georgia in implementing its existing international instruments with regard to older persons, in tandem with non-governmental organizations and all civil society actors, in particular to address old-age poverty and to ensure that the rights of older persons in post-emergency situations are adequately protected, for example, by taking into account their medical and nutritional needs, and their mobility challenges, including in their access to essential services. Data on older persons should therefore be systematically collected in such situations.

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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Report of the Independent Expert on the enjoyment of all
human rights by older persons on her mission to Montenegro****Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Montenegro from 23 to 30 April 2018. The main objective of the visit was to identify both best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons. In her report, the Independent Expert assesses the implementation of existing international instruments, laws and policies pertaining to the enjoyment of all human rights by older persons in Montenegro. Based on information gathered prior to, during and after the visit, the Independent Expert analyses the challenges faced in the realization of all human rights by older persons, paying particular attention to ostracized persons and groups.

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Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Montenegro*

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* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 33/5, the Independent Expert on the enjoyment of all human rights by older persons conducted an official visit to Montenegro from 23 to 30 April 2018, at the invitation of the Government. The purpose of the visit was to identify best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons in the country.

2. During her visit, the Independent Expert met with the President and the Prime Minister, as well as numerous representatives of the Government, local authorities, the Protector of Human Rights and Freedoms of Montenegro (Ombudsman), non-governmental organizations, researchers, academia and civil society, as well as others working on the rights of older persons and older persons themselves, inter alia, in Podgorica, Bijelo Polje, Nikšić, Risan, Kotor, Dobrota, Budva and Bar.

3. The Independent Expert thanks the Government of Montenegro for extending an invitation to her and for its cooperation throughout the visit. She also expresses her appreciation to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and its Special Procedures Branch for its support in the preparation and execution of the visit.

4. The Independent Expert further expresses her gratitude to the Government of Montenegro for extending an invitation to her and for its cooperation and excellent support throughout the visit. She also expresses her appreciation to the United Nations country team, the United Nations Development Programme, the Office of the United Nations High Commissioner for Refugees, as well as the Red Cross in Montenegro for its support during her visit.

II. Background and context

5. Between 1945 and 1992, Montenegro was a constituent republic of the former Socialist Federal Republic of Yugoslavia. In April 1992, Montenegro and Serbia formed a new federal State, namely the Federal Republic of Yugoslavia. In 2003, the Federal Republic of Yugoslavia was officially reconstituted as a loose union known as Serbia and Montenegro. On 21 May 2006, Montenegro held a referendum on independence, in which 55.5 per cent of the population voted for independence.

6. Montenegro is a small State in South-Eastern Europe with an estimated population of 629,219 and a relatively flat population growth. It is a very ethnically diverse country, which recognizes several ethnic groups.¹ There are also some 11,000 refugees from the former Yugoslavia, who have acquired foreigner status.² The applications of 945 refugees from the former Yugoslavia are still pending and, as a consequence, they continue to hold

¹ The population of Montenegro, according to the national affiliation, consists of: Montenegrins 278,865 (44.98 per cent); Serbs 178,110 (28.73 per cent); Yugoslavs 1,154 (0.19 per cent); Albanians 30,439 (4.91 per cent); Bosniaks 53,605 (8.65 per cent); Bosnians 427 (0.07 per cent); Bosniaks/Muslims 181 (0.03 per cent); Montenegrins/Muslims 175 (0.03 per cent); Montenegrins/Serbs 1,833 (0.30 per cent); Goranians 197 (0.03 per cent); Muslims/Bosniaks 183 (0.03 per cent); Muslims/Montenegrins 257 (0.04 per cent); Serbs/Montenegrins 2,103 (0.34 per cent); Turks 104 (0.02 per cent); Egyptians 2,054 (0.33 per cent); Italians 135 (0.02 per cent); Macedonians 900 (0.15 per cent); Hungarians 337 (0.05 per cent); Muslims 20,537 (3.34 per cent); Germans 131 (0.02 per cent); Roma 6,251 (1.01 per cent); Russians 946 (0.15 per cent); Slovenians 354 (0.06 per cent); Croats 6,021 (0.97 per cent); others 3,358 (0.54 per cent); and undeclared 30,170 (4.87 per cent). See <http://www.monstat.org/eng/page.php?id=393&pageid=57>.

² In 2009, the Government of Montenegro introduced privileged access for those with the status of foreigner. This status secures access to many rights guaranteed to citizens (e.g. work, except in State institutions where Montenegrin citizenship is required, as well as health care, social care, possession of real estate) in line with relevant legislation. The status of foreigner with permanent residence is not time-limited and is a pathway to Montenegrin citizenship after 10 years of permanent residence.

the insecure and ambiguous legal status of either “internally displaced persons” or “displaced persons”.³

7. As Montenegrin society is ageing rapidly, specific responses to the challenges that presents in terms of the human rights of older persons are required. In 2015, around 20 per cent of the population was aged 60 or over. The number of older persons has tripled over the past 50 years and it is expected that, by 2050, more than 1 in 5 persons will be aged 60 or over.⁴ Older persons in Montenegro are particularly vulnerable to old-age poverty or bad health or being subjected to violence, maltreatment or abuse.

8. The country ranks low on the Global AgeWatch Index 2015, at 68th overall.⁵ It performs best in the health domain, with the highest values in its region for the psychological well-being indicator (95 per cent). It ranks moderately low in the income security domain (61), although its pension coverage (52.3 per cent) is the lowest in the region. Montenegro has the third lowest employment rate of older persons in the region and ranks lowest in the region for educational attainment among older persons.

III. Administrative, legal, institutional and policy framework

9. When Montenegro gained its independence on 3 June 2006, it was established as an independent, sovereign State with the republican form of government. The country's constitutional conception was that of a civil, democratic and ecological State of social justice, based on the rule of law.⁶ Legislative power was exercised by Parliament, executive power by the Government and judicial power by the courts. The country was represented by the President, who was directly elected for a five-year term of office, renewable once. Constitutionality and legality were protected by the Constitutional Court.

10. Montenegro ranked high in the human development index, at 48th out of 188 countries and territories. According to the data published by the Statistical Office of Montenegro, it had recorded strong economic growth, which had reached 5.1 per cent in the second quarter of 2017, which was the fifth highest growth rate in Europe.⁷

11. Montenegro had ratified or acceded to most human rights conventions of particular relevance to older persons. It was a party to the main international human rights instruments, including the International Covenant on Civil and Political Rights and its Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities and its Optional Protocol. It was also party to the Convention on the Rights of the Child, and its Optional Protocol on a communications procedure. The State was a

³ The status of “internally displaced” and “displaced” person is not officially defined in national legislation. In order to protect such persons, the Government issued in 2010 a decree on temporary access to rights by internally displaced persons and displaced persons, to recognize their rights while their applications for foreigner status are processed. However, the decree does not supersede the law, and in practice it is challenging for such persons to have access to the rights guaranteed by the decree. See submission of the Office of the United Nations High Commissioner for Refugees to the third universal periodic review of Montenegro, available at www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMontenegroUNContributionsS29.aspx.

⁴ United Nations Development Programme Montenegro, “Ageing and seniority — the quality of life” (2 October 2013), available from www.me.undp.org/content/montenegro/en/home/presscenter/articles/2013/10/02/ageing-and-seniority-the-quality-of-life.html.

⁵ See www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Montenegro.

⁶ See Constitution of Montenegro, art. 1 (19 October 2007).

⁷ See www.gov.me/en/News/176805/Montenegro-at-European-top-in-terms-of-real-GDP-growth-rating-B1-affirmed-and-in-condition-to-change-outlook-to-stable.html.

signatory to the Rome Statute of the International Criminal Court, and a party to the Convention relating to the Status of Refugees and the Convention on the Reduction of Statelessness. It has yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

12. Montenegro was a party to fundamental International Labour Organization (ILO) conventions, including the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); the Paid Educational Leave Convention, 1974 (No. 140); the Worst Forms of Child Labour Convention, 1999 (No. 182); the Social Protection Floors Recommendation, 2012 (No. 202); and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). It was not party to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and Domestic Workers Convention, 2011 (No. 189).

13. The country had, however, not ratified a number of other ILO conventions and recommendations relevant to older persons, including the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); the Rural Workers' Organisations Convention, 1975 (No. 141); the Nursing Personnel Convention, 1977 (No. 149); the Labour Administration Convention, 1978 (No. 150); the Maintenance of Social Security Rights Convention, 1982 (No. 157); the Labour Statistics Convention, 1985 (No. 160); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173); the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205); the Labour Statistics Recommendation, 1985 (No. 170); the Labour Relations (Public Service) Recommendation, 1978 (No. 159); the Nursing Personnel Recommendation, 1977 (No. 157); the Recommendation concerning Employment and Conditions of Work and Life of Nursing Personnel, 1977 (No. 157); and the Income Security Recommendation, 1944 (No. 67).

14. At the regional level, Montenegro was a member of the Council of Europe and a participating State of the Organization for Security and Cooperation in Europe (OSCE). In 2004, it had ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and was subject to the jurisdiction of the European Court of Human Rights. The country had also recently ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

15. Accession negotiations with the European Union had been opened in June 2012. To date, 30 negotiating chapters had been opened, of which 3 had been provisionally closed. Continuing approximation with the European Union remained a key external anchor for reforms in various areas.

16. The Constitution of Montenegro guaranteed human rights and freedoms to everyone, without discrimination on any ground. It provided that all ratified and published international agreements and generally accepted rules of international law had supremacy over national legislation. According to the Constitution, ratified international treaties formed an integral part of national legislation and were directly applicable when they differed from national legislation. The Constitution provided that everyone had the right to equal protection and access to legal remedy.

17. Montenegro had recently adopted the National Strategy for the Development of the Social Protection System for the Elderly for the period 2018–2022, as well as an action plan for 2018 for its implementation, which replaced the previous strategy that had covered the period 2013–2017. One of the stated main objectives of the previous national strategy had been the provision of integrated social services, i.e. cross-sectoral cooperation regarding the provision of services, in recognition of the growing needs of an ageing society. This had so far remained an important commitment but had not necessarily translated into relevant operational documents or practice.

18. Article 81 of the Constitution provided for the establishment of the Protector of Human Rights and Freedoms (the National Human Rights Institution). The Protector was an independent and autonomous authority who took measures to protect human rights and freedoms. The Protector examined human rights violations based on complaints received from citizens, including about the work of courts, the performance of the prosecution and police conduct or ex officio activities. In 2011, the Law on the Protector of Human Rights and Freedoms of Montenegro had entered into force, by which the Protector had been given additional competences, notably by becoming the institutional mechanism for the protection against all forms of discrimination and the national preventive mechanism for the protection and prevention of persons deprived of liberty against torture and other forms of cruel, inhuman or degrading treatment or punishment.

19. In 2016, the institution of the Protector had received B status from the Global Alliance of National Human Rights Institutions, meaning that it was only partially in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The need to enhance the independence of the Protector had been emphasized repeatedly.⁸ Several aspects of the work of the Protector Office had improved, including its visibility, outreach and productivity. However, there was still room to increase its efficiency and the quality of its opinions. While noting the adoption in 2014 of the Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro, concerns had been repeatedly expressed at the institution's reported lack of capacity to implement its broad mandate in accordance with the Paris Principles.⁹ Public trust in the institution had improved, as shown by the number of reported cases. Cases initiated by the Protector at its own initiative had also increased.

20. Montenegro had started to develop a national mechanism for reporting and follow-up on the recommendations received from the United Nations human rights mechanisms, including the development of a database.¹⁰

21. While several ministries shared overall responsibility for older persons in Montenegro, the well-being of older persons fell mainly within the competence of the Directorate General for Social and Child Protection of the Ministry of Labour and Social Welfare. The Ministry was also responsible for the implementation of the national strategy. Ageing, by its cross-cutting nature, also fell within the competence of several other ministries, notably the Ministry of Health, the Ministry of Human and Minority Rights and the Ministry of Education.

IV. Independent Expert's main findings

A. Discrimination

22. The Ministry for Human and Minority Rights was the main governmental institution for policymaking on the protection of human rights and freedoms and anti-discrimination. A number of working bodies had also been formed that had the authority to monitor the implementation of the policies on the protection and exercising of human rights, including

⁸ See the joint opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (2011), paras. 25–26, available from [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)034-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)034-e); the report of the Commissioner for Human Rights of the Council of Europe following his visit to Montenegro, paras. 66–67, available from <https://rm.coe.int/16806db860>; and CERD/C/MNE/CO/2-3.

⁹ See E/C.12/MNE/CO/1, paras. 5 and 8; CCPR/C/MNE/CO/1, paras. 3 and 7; CAT/C/MNE/CO/2, para. 9; and CERD/C/MNE/CO/2-3, para. 10. See also A/HRC/30/38/Add.2, para. 86.

¹⁰ See A/HRC/38/13/Add.1, para. 6; and OHCHR, "National Mechanisms for Reporting and Follow-Up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms" (New York and Geneva, 2016).

the Social Council, the Council for the Rule of Law, the Gender Equality Council and the Anti-Discrimination Council.

23. The Anti-Discrimination Council, which consisted of the Prime Minister, the Ministers for Human and Minority Rights, Justice, Labour and Social Welfare, Health and Education and Sports, the Adviser to the Prime Minister on human rights and protection against discrimination, as well as six representatives of non-governmental organizations, had contributed to the legislation framework that enabled unhindered implementation of policies and activities in the areas of human rights and protection against discrimination.

24. The Council was in charge of monitoring and coordinating the activities of State authorities, State administration bodies and other relevant institutions in applying the anti-discrimination mechanisms and measures provided for by law. It was also in charge of screening the applicable legislation in terms of its alignment with ratified international conventions on human rights and freedoms and generally recognized international legal standards in the area of protection against all types of discrimination and, where appropriate, initiating amendments to these pieces of legislation. It monitored the implementation of the administrative and special measures by the relevant bodies as regards the protection against all types of discrimination; identified problems that arose in practice and proposed the measures for addressing them; and undertook determined measures for the sake of promoting anti-discrimination as one of the basic and common principles of protection of human rights and freedoms. Finally, it was in charge of ensuring the necessary cooperation with national and international bodies and organizations for the promotion of human rights and freedoms, and proposing other measures of importance for the protection of human rights and freedoms.

25. The Law on the Prohibition of Discrimination forbade discrimination on any grounds, and distinguished between direct and indirect discrimination. It explicitly specified discrimination based on race, colour, nationality and ethnicity in the fields of education, employment, choice of profession, expert qualifications, social protection, welfare, health care and housing.

26. Amendments to the Law on the Prohibition of Discrimination had been adopted in June 2017, aimed at further alignment with the European Union *acquis*. Court cases remained nevertheless rare, although ageism seemed to be widespread, and stereotyping of and discrimination against older persons remained an issue of concern.

27. In June 2015, Parliament had adopted a new Law on the Prohibition of Discrimination of Persons with Disabilities, containing provisions prescribing penalties for committed discrimination and introduces new grounds and types of discrimination. The law had established new standards relevant to older persons with disabilities and regulates, among others, the fields of independent life and life in the community, as well as the issue of privacy, i.e. violation of privacy and interference in personal and family life and the misuse of data. Discrimination in the field of vocational training, work and employment had been specified with due care. It also covered the field of health care and adequate living standard.

28. With respect to gender equality, there were concerns about the practical impact of the relevant legislation, and further measures were required to combat stereotypes and discriminatory practices.

B. Violence, maltreatment and abuse

29. The occurrence of violence against and maltreatment and abuse of older persons was a major concern and still a taboo subject. There was no information at the national level about the number of older persons who were victims of violence, abuse or maltreatment every year. Such acts usually, though not exclusively, happened in the context of the family. These forms of violence often arose from ageist attitudes affecting both older men

and women, but also patriarchal attitudes regarding gender roles in Montenegro, which continued to be deeply entrenched within Montenegrin society.¹¹

30. There were also concerns about financial abuse of older persons, which was particularly problematic as it covered a broad spectrum of occurrences and often occurred by stealth. It had been reported that, in some instances, older persons had been forced by their children to transfer their property and then institutionalized in older persons' homes against their will. This was an area of particular concern for older persons with intellectual and/or psychosocial disabilities, as it was more complex to determine whether they had consented or been forced to move to care institutions and the degree to which substituted decision-making had occurred. The lack of scrutiny of the decisions as well as the lack of monitoring mechanisms was also a concern in psychiatric clinics.

31. The detection of violence against and maltreatment and abuse of older persons was generally an area of concern. While in institutional settings there were some indicators, such as the cleanliness of rooms and the availability of food and water, no data was available on such cases occurring in the family. Awareness-raising and sensitization needed to target specifically the private sphere and informal carers, particularly as collective prejudice against older persons and public awareness influenced the way in which abuse and violence was perceived, recognized and reported.

32. Social work centres primarily identified victims of domestic violence. According to the Report of the Ministry of Labour and Social Welfare in 2013, 285 women had been identified as victims of domestic violence, 52 men and 28 older persons. In 2014, 281 women, 50 men and 33 older persons had been recorded as victims of such violence. There was no data available for 2015. The prevailing domestic violence had been emotional, followed by physical, sexual and economic.¹²

33. The Government had taken measures to create a legal framework and a policy framework through the adoption of laws and policies that would provide an adequate response to domestic violence, including violence against older persons.

34. In 2010, Montenegro had adopted the Law on Protection against Domestic Violence. A strategy for protection against domestic violence had been developed in July 2011, and in December 2011, a protocol for the treatment, prevention and protection from domestic violence had been agreed. The current Strategy for Protection against Family Violence for the period 2016–2020 defined the basic policy of Montenegro in relation to protection against domestic violence.

35. Despite this solid legislative framework and policy, application in practice remained difficult. The Law on Protection from Domestic Violence, for instance, required the formation of a large number of support services, including a secured infrastructure as a prerequisite for the implementation of the law as well as a dedicated budget and staff training.

36. There was also a lack of awareness and sensitivity among the relevant authorities and a lack of information about the existing protection mechanisms. Effective victim support services, such as shelters and safe houses, were yet to be provided, along with better and more accessible legal aid. Judicial authorities were unaware of the need for urgent action to be undertaken, and the absence of positive case law was unhelpful. The mild sentences handed down by the courts bordered on impunity. The limited numbers of protection orders issued in cases of repeated reports of violence needed to be addressed. The limited awareness among the general public of the problems of domestic violence was also a serious problem that prevented the creation of a safe and supportive environment for

¹¹ See CEDAW/C/MNE/CO/2, paras. 46–47.

¹² See SOS Telephone for Women and Children Victims of Violence, Podgorica, "Domestic Violence in Montenegro: Theory and Practice (Monitoring Study)" (Podgorica, Montenegro, 2017), p. 79; and Government of Montenegro submission dated 27 June 2018 in reference to reports by the Ministry of Labour and Social Welfare, in which the Government added figures for 2012, specifically that 1,015 persons had been reported as victims of domestic violence, of which 628 had been women, 318 men and 40 minors.

victims of violence. This was further compounded in the case of violence against or maltreatment and abuse of older persons, who often feared reprisals by their caregivers, and where the privacy barrier in family relationships and lack of awareness contributed to underreporting.

C. Adequate standard of living and autonomy

37. The stated objective of Montenegro was to enable older persons to remain active members of society to the greatest extent possible, choose freely their lifestyle and lead an independent life in their home and natural environment to the greatest extent possible. It also aimed to respect the privacy of the elderly and participate in the improvement of living conditions of elderly persons in social protection institutions. The Government was increasingly assuming the role of protector of older persons against many of the risks they could incur in old age, yet many remained deprived of full inclusion and participation in social, economic, cultural and political affairs.

38. Poverty was structurally engrained in Montenegro. Poverty rates had persisted over the past few decades due to high unemployment and low income levels. The Independent expert notes that there was no data available disaggregated by age, in particular on old-age poverty and on older persons living in the street, which impeded the development of targeted policies. While there was no data available on older persons living in the streets, their number seemed to have grown. The fact that the number of retirees had increased in the past 10 years could have led to more elderly persons living in poverty.

39. There were significant disparities in the extent of poverty between the regions, particularly the North and other parts of the country. Poverty rates in the North, where a third of Montenegro's population lived, were almost twice that of the Central and Southern regions. The rural population also faced a greater risk of poverty compared with the urban population.

40. Older persons, and notably older women, were particularly vulnerable to poverty and social exclusion in Montenegro. The risk of old-age poverty was further increased if older persons belonged to those population groups that were poorer than the average, such as Roma, persons of Ashkali and Egyptian ethnicity, displaced persons or persons with disabilities. One of the most vulnerable groups was older refugees and those holding the legal status of either "internally displaced persons" or "displaced persons" who did not have family members to take care of them.

41. Older rural women, who constituted a large portion of rural women, carried a disproportionate burden of unpaid and physically challenging work under difficult conditions, such as having limited access to running water and/or electricity and childcare facilities. The Family Law further contributed to women facing accrued old-age poverty risks as it allowed, inter alia, for unequal division of the joint property in cases where one spouse could prove that his/her contribution had been higher.

42. The number of older persons unable to meet their own basic needs continued to grow in rural areas of Montenegro, some of which were not connected by any sort of organized transport and lacked proper infrastructure. Older persons living in such areas were virtually incapacitated in performing everyday tasks, such as buying groceries, registering documents, paying bills and seeing a doctor.

43. The Government recognized that social exclusion was one of the major challenges for older persons and had made it a key priority. The Ministries of Labour and Social Welfare and of Education and Sport had partnered with United Nations agencies and the European Union to enhance social inclusion in order to facilitate access of vulnerable, socially excluded groups to comprehensive, inclusive and sustainable family and community-based services.

44. Accessibility, both to buildings and areas in public use, was covered by the Law on Prohibition of Discrimination of Persons with Disabilities. It also covered accessibility to public transport, public and private properties and services, and equality under law and before State and other authorities. While Montenegrin laws were in line with international

standards regarding persons with disabilities, the implementation of the Convention on the Rights of Persons with Disabilities remained weak. There had been some improvement in enabling access to public buildings for persons with reduced mobility, but many public institutions were not yet accessible.

46. The right to housing was not enshrined in the Constitution of Montenegro. However, the 2011–2020 National Housing Strategy and the Law on Social Housing set out the basic strategic and institutional elements of the social housing system. Pursuant to the Law, persons aged 67 or over were entitled to have their housing needs addressed. Other priority groups in the exercise of the right to social housing included persons with disabilities, Roma and ethnic Egyptians, and displaced persons. Age was also one of the general criteria for determining the order of precedence of persons.

46. No data was available on the number of persons who were homeless or inadequately housed and without access to basic infrastructures and services such as water, heating, waste disposal, sanitation and electricity, or the number of persons living in overcrowded or structurally unsafe housing. The fact that the Ministry of Labour and Social Welfare had not recorded any complaint on discrimination against homeless persons was not proof that such cases did not exist. The Independent Expert recognized the temporary measures taken in Podgorica to provide housing to homeless older persons but noted there was a need for a practical reflection and more systematic efforts to assist this vulnerable group and to expand the availability and quality of social housing for homeless persons and older persons.

47. The issue of deprivation of legal capacity must be addressed without delay, in line with the Convention on the Rights of Persons with Disabilities. The current guardianship and substitute decision-making regime must be replaced with a system of supported decision-making that fully respects the autonomy, integrity, dignity, will and preferences of the person.

48. Montenegro was exposed to earthquakes and floods, with floods posing the greater risk. The floods in 2010 had been, according to the Government, the worst ever recorded and had affected more than 5,000 people in Montenegro. Another devastating flood in the Balkans had also affected Montenegro in 2014. Such disasters had a disproportionate effect on older persons, particularly those living in remote rural areas.

D. Social protection and the rights to social security and work

49. Social safety nets in Montenegro were well developed but did not adequately cover all risks for all population strata, notably older persons were still at risk of poverty. The system of social protection of older persons in Montenegro included health care, pension insurance, disability insurance and unemployment insurance.

50. The social protection system consisted of a non-contributory part, including institutional and non-institutional care and social welfare benefits, and a contributory part, such as pensions, health and unemployment insurance.

51. Social assistance spending was above the European average. Given the population dynamics in Montenegro, i.e. an ageing population in the context of a nearly stagnating population growth, meeting social protection needs was increasingly becoming a challenge. The old-age dependency ratio was expected to double from about 20 in 2015 to almost 40 in 2050, and the working-age population would face an increasing financial burden to support older persons. The dependency ratio was significantly above the average of emerging economies, but not quite as high as that of advanced economies.

52. Montenegro had adopted several national strategies that were of relevance to the social protection of older persons. These included the Strategy for the Development of a Social and Child Protection System, a strategic document with regard to the development of a social protection system, including for older persons. The Strategy for the Integration of Persons with Disabilities in Montenegro for the period 2016–2020 aimed to continue to improve the position of persons with disabilities and establish the broadest legal framework

for the definition of policies on persons with disabilities, in accordance with the social model of approach to disabilities.

53. Comprehensive reform of the social welfare system was one of the key undertakings of the Government in the ongoing European Union integration process. The adoption in May 2013 of the Law on Social and Child Protection had been an important step towards the protection of the most vulnerable groups, as well as to the creation of an institutional framework, but there seemed to be a lack of capacity of State institutions to implement the law effectively. The effective and accountable delivery of quality social services at the local level also continued to face challenges, including with regard to the design and implementation of local social inclusion plans as well as insufficient capacities and lack of facilities to provide social services, especially in rural areas.

54. A backbone of the social welfare reform process had been the introduction of a new, innovative information system, the so-called Social Welfare Information System, which aimed to re-engineer, improve and upgrade the capacities of the 13 social welfare centres in charge of conducting needs assessments of older persons, evaluating the suitability of caretakers and monitoring individual plans of services and cover in all 23 municipalities of Montenegro. The System covered almost all of the business processes in the centres, including case management, social transfers, benefit applications, processing, approval, monitoring and audit (including around €70 million annually for benefit payments alone). As such, social welfare centres became one-stop shops where all documents to determine social benefits eligibility were made available. The new System generated so-called "e-social cards" to reduce inclusion errors and improve the efficiency and effectiveness of financial assistance. Due consideration had to be given to older persons' accessibility bearing in mind challenges relating to their information technology literacy.

55. Montenegro had started to reform its pension system in 2004, including by gradually raising the pension age to 65 years for men and 60 years for women. In 2011, the Amendments to the Law on Pension and Disability Insurance had introduced further changes to the pension system.¹³ Plans are currently under way to raise the pension age again, to 67 years for men by 2025 and for women by 2041. The reforms had not so far contributed to the sustainability of the welfare system, and an ageing population was expected to put further pressure on pension expenditures.¹⁴

56. According to article 1 of the abovementioned Law, the pension and disability insurance system consisted of the mandatory pension and disability insurance based on the principle of intergenerational solidarity, the mandatory pension and disability insurance and a voluntary pension insurance, both based on individual capitalized savings.

57. The economy was characterized by endemic informality and a relatively low rate of activity. This was especially the case for women, in particular older women in rural areas, who had engaged in unpaid work or in the informal sector, and who therefore did not have access to the contributory social protection schemes, such as old-age pension.

58. The adequacy of retirement income for older persons remained an issue of concern. At the beginning of the reform, pensions had amounted to 85 per cent of average earnings, and were now below 60 per cent of average earnings. Measures should not only be aimed at ensuring a certain standard of living for older persons, but more generally at providing a means for older persons to maintain, to a reasonable degree, the standard of living they had reached in their working lives, and to enable them to participate actively in public, social and cultural life.

¹³ Pension and Disability Insurance Fund of Montenegro, "Guide to Exercise the Rights to Pension and Disability Insurance" (Podgorica, 2011), available at www.fondpio.me/pdf/Vodic%20eng%20FINAL.pdf.

¹⁴ See International Monetary Fund (IMF), "Montenegro Selected Issues", IMF Country Report No. 17/277 (2017), p. 40, available at www.imf.org/~media/Files/Publications/CR/2017/cr17277.ashx.

E. Education, training and lifelong learning

59. The process of reforming the education system in Montenegro had started in 1999. Adult education was a part of a single education system aimed at the creation of an environment where citizens were involved in a lifelong learning process with a view to developing a competitive market economy and reducing unemployment and social exclusion. Adult education was conducted through formal and non-formal education, i.e. learning, informal learning and self-directed learning.

60. Montenegro had adopted a number of strategies relevant to the education, training and lifelong learning of older persons, including the Adult Education Strategy 2015–2025 and the Adult Education Plan 2015–2019 — which was elaborated for each year and each unit of local self-government in the Annual Plan for Adult Education — and the Strategy for the Development of Vocational Education in Montenegro (2015–2020). One of the current priorities of the Ministry of Education was to provide training to persons belonging to minorities.

61. Despite the ongoing reform activities, adult education in Montenegro still and to a great extent performed a corrective function within the formal education system. This was in particular necessary since there was a mismatch between the education system and labour market needs that remained an issue of concern. There was no particular focus, however, on those older persons who had retired. While educational programmes should not target older persons exclusively, as this would be limiting and could lead to the creation of spaces of social exclusion, there was a need to ensure access to education and training for the elderly, taking into account their specific interests and needs, and the fact that they learned differently from younger ones.

62. Around 3 per cent of persons were enrolled in lifelong learning programmes, which clearly indicated that further efforts should be invested in strengthening the lifelong learning concept, including the promotion and implementation of activities, in order to increase the number of adults in such programmes.

F. Care

63. In July 2015, the Government had adopted the new Health-Care System Development Master Plan 2015–2020. Its objective was to provide accessible and comprehensive health care. The Master Plan covered the prevention and control of chronic non-communicable diseases, the prevention and control of communicable diseases, the health care of the most sensitive and vulnerable categories of the population and efforts to strengthen public health, with defined goals and activities and with emphasis on improving information, as an effective mechanism for achieving social goals.

64. The new Law on Health Care, adopted in December 2015, had created the conditions for the maintenance, protection and promotion of citizens' health and the improvement of the health condition of the population. The Law aimed to ensure the sustainability of the health system and the availability of high-quality health care, under equal conditions for all citizens of Montenegro. The solutions put forward included special care for those categories of the population whose health was threatened and who were socially vulnerable.

65. Based on the Law on Health Insurance, older persons were covered by the mandatory health insurance, which included medical examinations and medicine. Problems occurred when an older person, who had been prescribed medical examinations or medicine, could not obtain them in public health institutions (including public pharmacies), so had to go to private health institutions and pay for the examinations and medicine. The insurance would not cover the actual cost, and the difference between the price paid and the price reimbursed (the bare cost of the medical procedure or medicine at which it had been supplied to the private health-care institutions) fell on the older person and could be as high as three times the amount reimbursed.

66. Home-care services followed by day-care services for older persons were the most common services that provided assistance to older persons and ensured that they could stay as long as possible in their primary environment. Alternative care services needed to be strengthened to complete the successful deinstitutionalization efforts.

67. The Ministry of Labour and Social Welfare, between 2012 and 2013, had engaged in a project entitled "Reform of the Social and Child Protection System: Enhancing Social Inclusion", to support the development of community services for older persons. The project provided support to local partners to identify needs, develop a model of service delivery and implement it, building on the capacities of social work centres, municipal organizations of the Red Cross and, to a lesser degree, civil society organizations.

68. Home-care services had been continually expanded in Montenegro since 2015 in cooperation with the United Nations Development Programme. So-called "home help for the elderly" service was provided in 16 municipalities by social work centres through the engagement of 120 old-age assistants ("geronto assistants") for about 1,200 beneficiaries in 2017. The criteria for determining the number of such assistants to be hired by the municipality was the number of beneficiaries of care and assistance benefits above 65 years of age and the number of beneficiaries of material benefits above 65 years of age.

69. The Red Cross and other civil society organizations were also important providers of social services for older persons in Montenegro but had no access to funding from public revenues at the national level. The home-care programme of the Red Cross sought to improve the quality of life of older persons and decrease the level of old-age poverty. Support was being provided in 12 municipalities to some 700 older persons, including through a network of trained volunteers, to enable them to live autonomously and remain in their homes for as long as possible. Besides the direct provision of services during house visits and at clubs for the elderly, the Red Cross was also working intensively on networking with all relevant stakeholders, performing public advocacy, raising awareness on the needs and problems of older persons and promoting healthy ageing.

70. There were important disparities between urban and rural areas in Montenegro regarding access to home care for older persons. Older persons in the North of the country, who often constituted the majority of the population in small villages, tended to be isolated and services were often outside their reach.

71. Efforts were ongoing to increase capacities for accommodation of older persons, such as the construction or reconstruction of facilities in the municipalities of Pljevlja and Nikšić. The Elderly Home Pljevlja had been founded in September 2017. The activities of the home included: (the accommodation of adults with disabilities and older persons; occupational engagement to provide employment and occupational therapy, cultural and entertainment activities; and health care, provided in accordance with regulations on health care and health insurance. The home had a capacity of 68 beds. The reconstruction of a military complex in Trebjesa for the purposes of building a home for older persons and persons with disabilities in the municipality of Nikšić was also under way. The capacity of that home was envisaged at 220 beds.

72. Privately owned homes for older persons had developed in recent years, but did not form part of the social protection system as there were no systematic conditions for their licensing. The introduction into the system of these homes could significantly enhance the capacity of the system to provide quality services for older persons, and was possible provided they exceeded the minimum standards.

73. The Independent Expert was concerned at the lack of alternative care settings for persons with mental health care needs and with intellectual and/or psychosocial disabilities. Older persons who could live autonomously with adequate assistance and did not require hospitalization were therefore placed in psychiatric clinics, such as the Kotor psychiatric clinic. There were also no specialized institutions for older persons suffering from Alzheimer's disease, who would either receive care in psychiatric clinics or within their families.

74. The first two day-care centres for older persons had been opened in 2015 in Nikšić, in cooperation with the local administration. Currently, Montenegro had six day-care

centres for older persons, including three in Nikšić, two in Danilovgrad and one in Mojkovac.

75. Health care for many older refugees had become inaccessible as a result of the obligation imposed on all foreigners to submit certificates from their countries of origin proving they were not beneficiaries of a State health insurance scheme.

V. Conclusions and recommendations

A. Overall remarks

76. The Independent Expert welcomes the recent finalization of the Strategy for the Development of the Social Protection System for the Elderly for the period 2018–2022. She notes that the related action plan, which comprises a set of measures, should also include information on financing the implementation of planned tasks, including the sources of funds and needed amounts. There are also a number of other auxiliary strategies, such as the Strategy for the Development of Social and Child Protection System, dealing with the development of the social protection system, or the Strategy for the Integration of Persons with Disabilities in Montenegro for the period 2016–2020. These attest to the political will and determination in improving the situation of older persons for them to be able fully to enjoy their human rights. Noting these important commitments, the Independent Expert calls upon the Government to deliver on its pledge to putting older persons first and to ensure effective implementation of the various strategies.

77. She commends the Government for the Analysis of Implementation of the Strategy for the Development of the Social Protection System for the Elderly for the period 2013–2017, as it generated valuable data on the status of the enjoyment of human rights by older persons in Montenegro and provided a basis for further targeted interventions in the years ahead.

78. The Independent Expert recognizes that Montenegro has improved its legislative framework related to the social protection of older persons, but stresses that further reforms are required, together with a reorganization of existing structures to ensure integrated services of social and health care for older persons.

79. While noting that the Directorate General for Social and Child Protection of the Ministry of Labour and Social Welfare has the primary responsibility for older persons in Montenegro, the Independent Expert notes that a comprehensive and multidisciplinary approach to ageing requires a functionally independent interministerial coordination mechanism, with a legal status and its own assets, which would also greatly facilitate the implementation of the national strategy and its action plan as well as efforts to monitor and evaluate its impact on the enjoyment by older persons of their human rights.

80. The Independent Expert acknowledges the important work of the institution of the Protector and recommends that legislation concerning the election and dismissal of the Protector be amended to ensure its independence and strengthen public confidence in the institution. It is also necessary to further strengthen the institution of the Protector by equipping it with adequate human, technical and financial resources to fulfil the recently expanded mandate of the office. She also recommends that the mandate be further broadened to specifically include older persons and that it be empowered to initiate and participate in judicial proceedings relating to discrimination. She further recommends that the Government strengthen the institution in accordance with the Paris Principles and provide it with adequate human and financial resources, considering, in particular, its role the institutional protective mechanism against discrimination.

81. On the basis of the findings and observations in the present report, the Independent Expert makes the conclusions and recommendations below.

B. Recommendations to the Government

1. Study and statistics

82. The Independent Expert encourages the Government to ensure the nationwide, systematic and regular collection of disaggregated data on the impediments to the enjoyment of all human rights by older persons, such as all forms of discrimination on the basis of age, individually and cumulatively, as well as exclusion, poverty and all forms of violence, abuse, neglect and maltreatment.

83. The new Social Welfare Information System, on its own and through of its interoperability with several national institutions, generates important sets of data about people found ineligible for benefits (and the reasons for their ineligibility), as well as the patterns in terms of income, social situation, geographical location and other socio-demographic characteristics of the applicants and beneficiaries. The Independent Expert recognizes the value of evidence-based data for the formulation of policies, for monitoring their implementation and for assessing their impact, including on older persons. Given that data have to be used sensibly in order to avoid stigmatization and potential misuse, particular care should be exercised when collecting, storing and analysing data to respect and enforce data protection and privacy.

2. Discrimination

84. The Independent Expert notes that stereotyping and discrimination of older persons remains an issue of concern in Montenegro. She recommends that the population be further made aware about ageism and its detrimental impacts, such as the reinforcing effect on violence against and maltreatment and abuse of older persons. She also stresses that patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men place women in a disadvantaged position.

85. Further noting concerns on the practical impact of the relevant legislation on equality between women and men, the Independent Expert stresses the need for further measures to counter stereotypes and discriminatory practices.

86. The Independent Expert recommends that the Government conduct a targeted awareness-raising campaign to correct the prevailing public perception of older persons as passive consumers of services offered by society, politically and socially inert and unfit to take part in decision-making. There is also a need to encourage and support older persons to take part in decision-making processes related to ageing and older age at all levels.

87. She highlights in this regard the importance of continuing to mark 1 October, the International Day of Older Persons, with activities across the country as a key occasion to draw the public's attention to issues of importance not only to older people but also to people of all ages, thus fostering intergenerational solidarity.

3. Violence, maltreatment and abuse

88. While recognizing the efforts of Montenegro to create a legal and policy framework to adequately address domestic violence, including violence against and maltreatment and abuse of older persons, the Independent Expert calls upon the Government to ensure effective application in practice.

89. The Independent Expert also calls upon the Government to ensure that cases of domestic violence are thoroughly investigated, that perpetrators are brought to justice and that victims are adequately protected and compensated. The training of judges, lawyers and prosecutors is essential to ensure that cases of domestic violence are investigated swiftly to signal to older persons and the community that violence against and maltreatment and abuse of older persons are serious crimes and will be treated as such. She also stresses the need to address the lack of awareness and sensitivity among the relevant authorities and the lack of information about the existing protection mechanisms.

90. Normative action needs to be complemented by concrete measures and mechanisms to detect, report and prevent all forms of abuse of older persons in institutional care and in family settings. Protocols and processes are needed to assist individuals, families, careers in institutional settings and community groups to understand the issues surrounding elder abuse, to recognize individuals who are at risk and to respond when appropriate. Caregivers, including old-age assistants ("geronto assistants"), in domestic and institutional settings, need to be made further aware and trained on how to prevent and detect elder abuse.

91. The Independent Expert calls upon the Government to step up its efforts to establish the planned database with comprehensive statistics on violence against women, disaggregated by gender, age and relationship between victim and perpetrator, as this would generate essential data for targeted prevention.

92. She also stresses the need to ensure the availability of a sufficient number of adequate shelters and safe houses adapted to the specific needs of older persons, better and more accessible legal aid and the actual provision to victims of counselling, rehabilitation and support services. Assistance to elderly victims of violence needs to include legal responses as well as social measures. As they may be afraid to go to the police, alternative services, such as case workers, should be available to support older persons throughout the process, e.g. by accompanying them to the police and helping them to find a shelter.

93. The Independent Expert recommends that awareness-raising specifically target the private sphere and informal carers, particularly as collective prejudice against older persons and public awareness influence the way in which abuse and violence is perceived, recognized and reported.

94. The Independent Expert recommends that a preventive information campaign on violence against and maltreatment and abuse of older persons be conducted. Targeted dissemination of information to older persons about their rights could help to improve disclosure of abusive experiences, including financial abuse occurring in the family.

4. Adequate standard of living and autonomy

95. The Independent Expert calls upon the Government to strengthen its efforts to combat poverty and social exclusion, particularly in the Northern region, and to develop an evaluation mechanism to assess the impact of the measures taken.

96. The Independent Expert recommends that Montenegro adopt an adequately resourced, comprehensive accessibility strategy and promote universal design for all buildings, public services and public transport to ensure accessibility for older persons, including those with reduced mobility and with disabilities.

97. It is essential for engineers and architects to be aware of the implications their professions have on the enjoyment of all human rights by older persons. The Independent Expert recommends that a human rights-based approach be applied in order to secure the involvement of architects and engineers in the design of public and private buildings, in conformity with human rights.

98. The Independent Expert notes that it is essential to foster the resilience of older persons, reduce their vulnerability and ensure that they are fully informed and participate actively in the formulation and implementation of policies and decisions that directly affect them. Their experience, knowledge and skills should be part of all phases of the disaster risk reduction strategy, from mapping exercises to implementing solutions at the local level. This would empower local communities to develop practical and realistic approaches to the environmental challenges faced. During emergency situations, humanitarian response, services, support and information must be adapted to the specific needs and conditions of older persons. National legal frameworks to protect the rights of older persons who are affected should draw upon existing standards, guidelines and best practices, such as the Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in

Situations of Natural Disasters, the Peninsula Principles on Climate Displacement within States as well as the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

99. While recognizing the measures taken to provide housing to homeless older persons, the Independent Expert calls for more systematic efforts to assist this vulnerable group and to expand the availability and quality of social housing for homeless persons and older persons in general.

100. The Independent Expert emphasizes the need for the issue of deprivation of legal capacity to be addressed without delay, in line with the Convention on the Rights of Persons with Disabilities, and to replace the current guardianship and substituted decision-making regime with a system of supported decision-making that fully respects the autonomy, integrity, dignity, will and preferences of the person.

5. Social protection and the rights to social security

101. Recognizing the efforts of Montenegro to improve its legislative framework related to social protection, the Independent Expert stresses the need to continue the reform to ensure integrated social and health-care services for older persons. This will require more efforts and expenditures by the Government on health and care infrastructure to provide alternatives to older persons.

102. The Independent Expert urges the Government to address the prevailing old-age poverty and consider the introduction of a non-contributory old-age pension as a means to contribute to poverty alleviation, particularly among older women, given that the ratio of older persons is expected to increase in the years to come.

103. The Independent Expert calls upon the Government to ensure that older rural women engaged in unpaid work or in the informal sector have access to non-contributory social protection schemes in line with Committee on the Elimination of Discrimination against Women general recommendation No. 16 (1991) on unpaid women workers in rural and urban family enterprises.

104. While noting the efforts of Montenegro to bring its legislation into line with the European Union acquis in the context of the accession negotiations, the Independent Expert notes that social policies are the competence of national member States with the support of the European Union. With regard to the austerity measures that the Government is planning to implement, the Independent Expert stresses the need to ensure that these do not have adverse impacts on older persons or infringe upon their economic, social and cultural rights.

6. Education, training and lifelong learning

105. While educational programmes should not target older persons exclusively, as this would be limiting and could lead to the creation of spaces of social exclusion, the Independent Expert stresses that there is a need to ensure access to education and training in old age taking into account their specific interests and needs, also as older persons learn differently from younger ones.

106. The Independent Expert recommends that a strategy of lifelong learning that adequately responds to the needs of older persons be elaborated to enable them to cope with constantly changing circumstances, requirements and challenges, for their active participation in society and for an independent life continuing into old age.

7. Care

107. The Independent Expert emphasizes that cross-sectoral services are required to provide adequate care to older persons, notably between the social protection and health systems. It is further necessary to improve the integration between the public and private health care to ensure that older persons are able to use private health services to have access to treatment that is not available under public health schemes, without having to bear the financial burden.

108. The Independent Expert recommends that Montenegro develop an overall a long-term care policy, taking into account input from older persons themselves at all levels, and ensure a human rights-based approach in the design and delivery of long-term care.

109. The Independent Expert welcomes the commitment for deinstitutionalization and the development of community services for older persons. In view of the population dynamics of Montenegro, she stresses the need to further develop home help and day-care centres to enable older persons to stay in their primary environment for as long as possible and allow the postponement of their accommodation in nursing homes. She further recommends that sufficient alternative accommodation services be developed, such as family accommodation for older persons or community-supported housing. Such alternative models could utilize existing resources of older persons themselves, if adequate legal protection is in place.

110. The Independent Expert notes that a number of services, such as "home help", i.e. home-care services, take place within a project framework, and recommends that these be further institutionalized and that resources be made available from local government budgets. Further fiscal decentralization would enable municipalities to increase the allocation of funds for social and community services.

111. The Independent Expert emphasizes the need to create urgently adequate accommodation capacities as well as standards for the accommodation of older persons suffering from dementia, with functional links made with medical services and the health-care system.

112. The Independent Expert was concerned at the lack of alternative care settings for persons with mental health-care needs and with intellectual and/or psychosocial disabilities, and recommends that the Government address this.

113. The Independent Expert calls upon the Government to ensure the provision of palliative care for older persons. She recommends that it further explore the development of community-based palliative care, for instance in the context of home help and day care for terminally ill older persons, and the provision of palliative care in new retirement homes for older persons, as well as the development of hospices to accommodate older persons suffering from incurable diseases.

114. While welcoming the concept of old-age assistants, the Independent Expert emphasizes the need to ensure that such caregivers receive adequate training, including basic information concerning geriatrics and how to interact with older patients. She also recommends that training in gerontology and geriatrics be made a requirement for all categories of health professionals dealing with older persons as well as community members, and that it pursues a biopsychosocial instead of a mere biomedical approach. Geriatric medicine also needs to be integrated into university curricula to ensure that sufficient qualified specialists in geriatrics are available to meet the needs of an ageing society.

115. The Independent Expert recommends that Montenegro ensure that full access to health care is given to older refugees who acquire "foreigner" status, as well as for those still holding the legal status of "internally displaced" or "displaced" persons.

116. The Independent Expert also stresses the need to ensure quality control in all settings and recommends that minimum standards be developed for social protection services and health-care institutions, as well as hospices and other community services. Quality management and monitoring in older persons' homes, as well as abuse prevention and the managing of such cases, also need to be strengthened.

C. Recommendations to the international community

117. The Independent Expert acknowledges the commitment of Montenegro to ensuring the full enjoyment by older persons of their human rights and notes that the international community has a valuable role to play in providing assistance to and

cooperating with the Government of Montenegro to ensure the full implementation of existing international and regional instruments relating to older persons. She supports the Government's call for expertise to be provided on human rights through, *inter alia*, the deployment by OHCHR of human rights staff members to the country to provide follow-up to and to promote the implementation of measures that help to promote and protect the human rights of older persons.

D. Recommendations to businesses

118. The Independent Expert is concerned about ageism and stereotyping of older persons, which goes hand in hand with certain forms of discrimination, such as gender-based discrimination, discrimination on the grounds of disability, origin or membership of an ethnic, religious or linguistic minority, or on any other grounds. The Independent Expert takes the opportunity to remind businesses that they should comply with the Guiding Principles on Business and Human Rights. She also takes the opportunity to draw the attention of the Government to its obligation to ensure the respect for, protection of and compliance with human rights in the sphere of business activities by public or private enterprises, and to the need to adopt appropriate legislation and regulations in conjunction with supervisory and investigative mechanisms and mechanisms to ensure accountability, in order to establish and ensure compliance with norms for business activities.